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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 14th February, 2019

+ CRL. M.C. 2365/2018

NAMAN JETHANI & ORS.

..... Petitioners

Through: Mr. Jai Deep Singh & Ms.
Aashna Jethani, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Gaurav, PS
Rani Bagh.
Mr. H.S. Dhillon, Adv. for R-2
with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to first petitioner as per Hindu rites and ceremonies on 05.12.2015. On 17.12.2016, she lodged first information report (FIR) no. 461/2016 with police station Rani Bagh under Sections 498A/406/34 of Indian Penal Code, 1860 (IPC) against her husband (first petitioner), his mother (second petitioner), his sister (third petitioner) and a friend of the family of the husband (fourth petitioner). On conclusion of the investigation, police filed report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on which cognizance was taken, the first petitioner having been summoned as accused, the said matter being pending on the file of the Metropolitan Magistrate.

2. The parties had entered into a settlement on 15.05.2017, in terms of which the parties were to approach, as per the timelines indicated, the appropriate forum for obtaining a decree of divorce, they also having agreed *inter alia* for the criminal case arising out of the aforementioned FIR to be sought to be quashed.

3. The petition, thus, has been moved before this Court invoking Section 482 Cr.P.C. seeking quashing of FIR no. 461/2016 under Sections 498A/406/34 IPC of police station Rani Bagh.

4. The second respondent on being served with a notice has appeared with counsel. Pursuant to order dated 25.07.2018, she has sworn an affidavit on 11.02.2019 which has come on record along with the copy of her aadhar card as proof of her identity. Since the said affidavit would not make clear the position about the payment of money under the settlement, she was called upon to file a fresh affidavit. The matter was passed over. In the resumed hearing, fresh affidavit of second respondent sworn today has come on record. By the said two affidavits, the second respondent has confirmed that she has settled all the disputes in terms the settlement dated 15.05.2017. At the hearing, both sides confirmed that the parties have already moved the Family court by two separate petitions, one after the other, on the basis of which their marriage has been dissolved by a decree of divorce dated 23.01.2018 in HMA No. 2093/2017. In terms of the settlement, the first petitioner had agreed to pay to the second respondent a total amount of Rs. 2,50,000/-. It is confirmed by the

second respondent through the second affidavit filed today that she has received a total amount of Rs. 1.5 lakhs so far. She has also confirmed to the court at the hearing that the first petitioner has handed over to her Banker's cheque no. 792705 drawn on State Bank of India, Mianwali Nagar, in her favour, for a sum of Rs. 1,00,000/-, copy of which is taken on record.

5. Pertinent to note here that offence under Section 498A IPC is not compoundable. The parties are constrained to move this court for quashing on the basis of amicable resolution arrived at by them in the facts and circumstances noted above.

6. The scope and ambit of the power conferred on this court by Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings, was examined by the Supreme Court in *B.S. Joshi and Ors. Vs. State of Haryana and Anr.*, (2003) 4 SCC 675, against the backdrop of a catena of earlier decisions. Noting, with reference to the decision in *State of Karnataka Vs. L Muniswamy*, (1977) 2 SCC 699, that in exercise of this “*inherent*” and “*wholesome power*”, the touchstone is as to whether “*the ends of justice so require*”, and it was observed thus :

“10. ... that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered

according to laws made by the legislature. ...that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

(emphasis supplied)

7. The Supreme Court in *B.S. Joshi* (supra) further noted as under :-

“What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the “negative”. It would, however, be a different matter if the High Court on facts declines

the prayer for quashing for any valid reasons including lack of bona fides.”

(emphasis supplied)

8. Holding that “special features in ...matrimonial matters are evident” and that it is “the duty of the court to encourage genuine settlements of matrimonial disputes”, referring to *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojiroo Angre*, (1988) 1 SCC 692, it was further observed that :

“11. ... Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.”

(emphasis supplied)

9. In *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303, the Supreme Court contrasted the request for quashing of criminal proceedings on the basis of settlement with the possibility of compounding of an offence and observed thus :-

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences,

power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.”

(emphasis supplied)

10. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be further illustrated by the decision of a bench of three Hon’ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita Raghuvanshi and Anr.*, (2013) 4 SCC 58, the following observations summarising the philosophy succinctly :-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort

should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed..."

(emphasis supplied)

11. In a case where criminal proceedings arise essentially out of *matrimonial* dispute and the parties have decided to bury the hatchet, the court must examine if there is any likelihood of the criminal prosecution resulting in conviction. In fact-situation wherein the matrimonial relation has been brought to an end by mutual consent and the parties are eager to move on with their respective lives seeking closure and if there is nothing to indicate lack of *bonafide* on the part of any side, denial of the prayer for quashing the criminal case would restore acrimony rather than bring about peace. Allowing continuance of the criminal action would be fruitless and clearly an abuse of judicial process.

12. The case at hand passes the muster of the above-noted tests.

13. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR no. 461/2016 under Sections 406, 498A, 34 IPC of Police Station Rani Bagh and the proceedings emanating therefrom are hereby quashed.

R.K.GAUBA, J.

February 14, 2019

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