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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th March, 2019

+ CrI.M.C. 2692/2018 & CrI.M.A. 9592/2018

HEMANT KUMAR & ORS. Petitioner

Through: Mr. Arbind Kumar, Adv.

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. K.S. Ahuja, APP for the
State with SI Devender.
Mr. Lakhan Lall, Adv. for R-2
along with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to the first petitioner according to Hindu Rites and Ceremonies on 18.02.2011. Out of the cohabitation of the parties, a female child named Kashvi @ Veronica took birth on 21.12.2011. The parties, however, separated from each other on 20.05.2012. On 09.11.2012, the second respondent lodged first information report (FIR) no. 251/2012 at police station Chhawla alleging offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860 (IPC) against her husband (first petitioner) and his mother (second 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 said matter being pending on the file of the Metropolitan Magistrate.

2. During the course of litigation before the matrimonial court, the parties had entered into a Memorandum of Understanding (MoU) on 22.02.2017. In terms of the said MoU 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 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. 251/2012 under Sections 498A/406/34 IPC of police station Chhawla.

4. The second respondent on being served with a notice has appeared with counsel. She has submitted an affidavit sworn on 06.03.2019 which has been filed today in the registry. During the course of hearing, the second respondent appeared in person and has produced her *aadhar card*, placing on record an attested copy thereof as proof of her identity. It is explained that though her name is Jai Lalita Rai, she is also known in the family by names of Jyoti Maharaj and Lalita Rai, it being the description in her driving license, copy whereof was submitted earlier (at page 66 of the paper book), the description in the ration card being Jyoti (at page 67). By the abovesaid affidavit and at the hearing, the second respondent has confirmed that she has settled all the dispute with the petitioner in terms of the said MoU out of her own free will and volition without any pressure or coercion. Both sides have 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 07.04.2018 in HMA No. 874/2018. In terms of the MoU, the custody of the child is to remain with the second respondent and she was to receive a total amount of Rs. 4,50,000/- from the first petitioner in full and final settlement of all her claims. The second respondent has confirmed by the affidavit that she has already received the first installment of Rs.3 lakhs before the Family Court. The balance amount of Rs.1,50,000/- has been tendered by the first petitioner and received by the second respondent in the form of demand draft no. 513153 issued by ICICI Bank, Patel Nagar Delhi in the name of Kashvi, the minor daughter of the parties, copy of which is taken on record. The second respondent has accepted the said instrument as complete discharge of his obligation by the first petitioner.

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.

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

12. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR no. 251/2012 under Sections 406, 498A, 34 IPC of Police Station Chhawla and the proceedings emanating therefrom are hereby quashed.

R.K.GAUBA, J.

MARCH 06, 2019

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