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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 26th April, 2019

+ CRL.M.C. 3037/2016

BHARAT BATRA & ORS.

..... Petitioners

Through: Mr. Viveck Agarwal, Advocate

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: Mr. Kewal Singh Ahuja, APP for
the State with Insp. Asha, PS CWC Nanak
Pura

Mr. Sanjeev Sahay and Ms.Jhun Jhun Sarkar,
Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to the first petitioner as per Hindu rites and ceremonies on 08.02.2011 in New Delhi. No child took birth out of the said wedlock. On account statedly of temperamental differences, the parties separated from each other in January 2012. The second respondent lodging first information report (FIR) no.149/2012 with police station CAW Cell, Nanak Pura, New Delhi on 22.10.2012, alleging offences punishable under Section 498A, 406, 34 of Indian Penal Code, 1860 (IPC) against her husband (first petitioner), his father (second petitioner) and his mother (third petitioner). On conclusion of the investigation, police filed report under Section 173 of the Code of

Criminal Procedure, 1973 (Cr. PC) on which cognizance was taken, the said matter being pending on the file of the Metropolitan Magistrate.

2. On 12.11.2014, the parties entered into a Memorandum of Understanding (MOU) through the process of mediation at the instance of Delhi High Court Legal Services Committee in terms of which they 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. PC seeking quashing of the FIR no.149/2012 under Sections 498A, 406, 34 IPC of Police Station CAW Cell, Nanak Pura, New Delhi.

4. The second respondent on being served with the notice has appeared with counsel. She initially objected to the prayer in the petition primarily on the ground that the timelines had not been adhered to and, therefore, she had been deprived of the money which she was to receive under the said MOU. The matter was deferred on the request of the parties so that they could iron out the differences. The parties have since re-negotiated the terms of the said MOU and have submitted fresh affidavits, the second respondent having earlier filed affidavit sworn on 24.04.2019, this being followed by another affidavit filed today in the Registry. The petitioners through their special attorney Chander Parkash have also placed on record his affidavit dated 26.04.2019.

5. As per the MOU dated 12.11.2014 and the aforementioned affidavits modifying the earlier terms partially, the parties had agreed that they would approach the appropriate forum for dissolution of their marriage by decree of divorce by mutual consent, and also to seek quashing of the criminal case arising out of the aforementioned FIR, the first petitioner having agreed to pay and the second respondent having agreed to receive as full and final settlement of her claims, a total amount of Rs.62 Lakhs.

6. The second respondent has acknowledged having already received Rs.45 Lakhs in two instalments, first of Rs.30 Lakhs at the time of first motion petition for divorce by mutual consent which was granted on 16.05.2015 (HMA no.464/2015) and the second, in the sum of Rs.15 Lakhs at the time of second motion petition leading to grant of decree of divorce by mutual consent on 12.01.2016 (HMA 1225/2015). Though as per the terms initially settled by the aforementioned MOU, the balance amount to be paid was only Rs.15 Lakhs, since there has been some delay on the part of the first petitioner, on the insistence of the second respondent, the first petitioner has agreed to pay an amount of Rs.17 Lakhs, this inclusive of the balance Rs.15 Lakhs alongwith element of interest and in terms of order dated 10.04.2015 of the court of the Metropolitan Magistrate.

7. The petitioners have handed over today to the second respondent and the second respondent has received against acknowledgement the demand draft bearing no.930772 dated 25.04.2019, drawn on Indian

Bank, in the sum of Rs.17 Lakhs in her favour. The second respondent now submits no objection to the prayer in the petition.

8. 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.

9. 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)

10. 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)

11. 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)

12. 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)

13. 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)

14. 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.

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

16. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR no.149/2012, under Sections 498A, 406, 34 IPC of Police Station CAW Cell, Nanak Pura, New Delhi and the proceedings emanating therefrom are hereby quashed.

17. The petition is disposed of accordingly.

Dasti to both sides.

R.K.GAUBA, J.

APRIL 26, 2019

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