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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th April, 2019

+ CRL.M.C. 4378/2016

GULSHAN & ORS.

..... Petitioners

Through: Mr. Mukul Rawal, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Raghuvinder Varma, APP for
State

Ms. Richa Dhawan, Advocate, DHCLSC 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 30.01.2012. No child took birth out of this wedlock. On 24.10.2013, the second respondent lodged first information report (FIR) no.235/2013 with police station Subzi Mandi, alleging offences punishable under Section 498A, 406, 34 of the Indian Penal Code, 1860 (IPC) against her husband (first petitioner), his mother (second petitioner) and his sister (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. The parties are stated to have entered into a settlement out of their own free will and volition by executing Memorandum of Understanding / Agreement dated 28.01.2015, by virtue of which they had, *inter alia*, agreed to bring an end to their marriage by mutual consent, and also approach this court for quashing of the proceedings arising out of the aforementioned FIR.

2. The petition, thus, has been moved before this court invoking Section 482 Cr. PC seeking quashing of the FIR no.235/2013 under Sections 406, 498A, 34 IPC of Police Station Subzi Mandi.

3. The second respondent was served with the notice and entered appearance on 03.05.2017. On her request, the matter was adjourned. On some of the subsequent dates, she would not appear. She could not appear on 17.05.2018 and the matter was once again renotified for another date. On 23.08.2018, when the matter was called out, there was again no appearance on her behalf, and consequently it was adjourned with direction that the second respondent would have the liberty to file her response on affidavit. The second respondent appeared again on 25.02.2019 when she sought assistance of an advocate at State expense. She was referred to Secretary, Delhi High Court Legal Services Committee for the needful to be done and given another opportunity for filing her response on affidavit within four weeks.

4. The learned counsel appointed by Delhi High Court Legal Services Committee is present and submits that the second respondent is not in contact with her at all. In above facts and circumstances, there is no just or sufficient reason to enlarge the opportunity for the second respondent to file her response further.

5. The petitioners have placed on record copy of the Memorandum of Understanding / Agreement dated 28.01.2015. They have also submitted on record copy of the proceedings recorded before the Family Court of Central District on the joint petition of the parties, they being HMA nos.162/2015 and 924/2015. It is noted that the joint statement of the first petitioner and the second respondent herein were recorded in the first said case (first motion) on 06.02.2015 and in the second said case (second motion) on 17.08.2015. By the said settlement, the second respondent, *inter alia*, had confirmed the settlement of the dispute with the first petitioner on the terms stated, she also giving an undertaking to the Family court that she would be cooperative with the opposite party for getting the proceedings in the aforementioned FIR quashed.

6. 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.

7. 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.”

नित्यमेव जयते (emphasis supplied)

8. 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)

9. 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)

10. 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)

11. 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)

12. 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.

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

14. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 235/2013 under Sections 406, 498A, 34 IPC of Police Station Subzi Mandi and the proceedings emanating therefrom are hereby quashed.

15. The petition is disposed of accordingly.

Dasti to both sides.

R.K.GAUBA, J.

APRIL 16, 2019

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