**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MMOs No. 389 and 697 of 2019**
**Reserved on: 18.12.2019**
**Decided on: 02.01.2020**

***1. Cr.MMO No. 389 of 2019:***

Anupam Mahajan & others ....Petitioners.

Versus

State of Himachal Pradesh & another ...Respondents.

***2. Cr.MMO No. 697 of 2019:***

Anupam Mahajan & others ....Petitioners.

Versus

State of Himachal Pradesh & another ...Respondents.

*Coram*
***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***
***Whether approved for reporting?[1] Yes.***

In both the petitions:

For the petitioners: Mr. Adarsh K. Vashishta, Advocate,

For the respondents: Mr. Shiv Pal Manhans, Additional Advocate General, with Mr. Amit Kumar Dhumal, Deputy Advocate General and Mr. Ram Lal Thakur, Assistant Advocate General, for respondent No. 1/State.

Mr. Lakshay Thakur, Advocate, for respondent No. 2.

**Chander Bhusan Barowalia, Judge**

Since both the petitions are *inter se* the same parties and the relief sought for by the petitioners is analogous, both the petitions heard together and now disposed of with a common judgment.

2. The present petitions have been maintained by the petitioners under Section 482 of the Code of Criminal Procedure (for

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

short “Code”) for quashing of F.I.R No. 0036 of 2016, dated 24.02.2016, under Sections 498A, 354 read with section 34 IPC and FIR No. 0299, dated 25.12.2015, under Section 406 IPC, both registered in Police Station, Kangra, alongwith consequential proceedings lying pending in the Courts of learned Judicial Magistrate 1st Class, Kangra, and learned Additional Chief Judicial Magistrate, Kangra, H.P.

3. The facts, which are necessary for determination and adjudication of the present petitions, can be tersely portrayed as under:

On 07.12.2014 marriage of Shri Anupam Mahajan (petitioner No. 1 herein) was solemnized at Delhi with Smt. Kanika Walia (respondent No. 2 herein) according to Hindu rituals. At the time of the marriage, petitioner No. 1 was posted at Manila, Philippines and respondent No. 2 had to accompany petitioner No. 1 to Manila, after the marriage. On 25.01.2015 petitioner No. 1 came to know that his father is suffering from fourth stage cancer, so he requested respondent No. 2 to accompany him to India, but she refused and ultimately on 04.02.2015 petitioner No. 1 came to India alone. Respondent No. 2 did not bother about the family of petitioner No. 1 and on being asked why she is not concerned about his family, she started abusing him and stopped talking with petitioner No. 1. As the father of petitioner No. 1 was to be admitted in Intensive Care Unit for treatment, he again came to India. Respondent No. 2, despite repeated requests, did not mend her behave and in turn she threatened to commit suicide and insisted to live separately from the parents of petitioner No. 1. The respondent No. 2

voluntarily let petitioner No. 1 and started living with her parents at her parental house and despite repeated endeavors he did not return. As the respondent no. 2 started threatening the petitioner No. 1, so a complaint was made to the police of Delhi. During the month of November, 2015, respondent No. 2 made a complaint to Women Cell of Dharmshala Police, whereupon FIR No. 0299, dated 25.12.2015 was registered. In addition, respondent No. 2 filed an application under Section 12 of the Prevention of Women from Domestic Violence Act, whereupon ultimately FIR No. 0036 of 2016, dated 24.02.2016 came to be registered. However, now the parties have entered into a compromise, through mediation, and in order to maintain their relations cordial, they do not want to continue with the cases. Hence, the present petitions.

4. Learned counsel for the petitioners has argued that as the parties have compromised the matter, vide effected on 18.09.2019, through mediation, which is made part of records, no purpose will be served by keeping the proceedings against the petitioner, therefore, FIRs, alongwith consequential proceedings, arising out of the FIRs, pending before the learned Court below may be quashed and set aside.

5. On the other hand, learned Additional Advocate General has argued that the offences in question is offences against the society and it cannot be compounded/quashed on the basis of settlement between the offenders and victim, so the present petition may be dismissed.

6. Learned counsel appearing on behalf of respondent No. 2 has argued that the present petitions may be allowed, in view of the compromise arrived at between the parties.

7. To appreciate the arguments of learned counsel appearing on behalf of the parties, I have gone through the entire records in detail.

8. At the very outset, it would be apt to extract the order dated 18.09.2019, passed upon the statements made before the learned Mediator by petitioner No. 1 and respondent No. 2, which in *extenso* is as under:

> **"After having deliberations between the parties for a considerable time. The parties have amicably compromised the matter without any influence, pressure and coercion. The parties mutually agreed to file a petition under Section 13-B of Hindu Marriage Act, 1955 in the competent Court of jurisdiction i.e. at Dharamshala before 10th of November, 2019. The petitioner No. 1 Anupam Mahajan has undertaken to give an amount of Rs. 15,00,000/- (Rupees fifteen lac) as permanent alimony to Smt. Kanika Walia-respondent No. 2 as full and final settlement for dissolution of marriage. He has to pay Rs. 5,00,000/- (Rupees five lac) at the time of filing of the aforesaid petition and balance amount of Rs. 10,00,000/- (Rupees Ten lac) wi9ll be paid by the petitioner No. 1 to respondent No. 2 in the Court of Learned District Judge or in the competent Court of jurisdiction at Dharamshala at the time of final hearing of the divorce petition in the shape of**

**bank draft/cheque. It is also stated by the respondent that all the litigations pending between the parties at Dharamshala i.e. FIR No. 0299 dated 25.12.2015, pending in the Court of Additional Chief Judicial Magistrate, Kangra bearing Case No. 135 of 2018, case FIR No. 0036 of 2016 dated 24.2.2016 pending in the Court of Judicial Magistrate Kangra vide case No.213 of 2018 and Domestic Violence complaint bearing No. 193-III-2015 pending in the Court of learned Additional Chief Judicial Magistrate, Kangra have come to an end today in the mediation proceedings.**

**The respondent No. 2 has stated that she has no objection in case petitioner No. 1 file a petition under Section 482 of Cr.P.C. for cancellation of FIR No. 0299 dated 25.12.2015, pending in the Court of Additional Chief Judicial Magistrate, Kangra bearing case No. 135 of 2018 in the Hon'ble High Court of H.P. She has further stated that she will not claim anything except alimony.**

**The statements made by the petitioner No. 1 as well as respondent No. 2 shall remain as part and parcel of the mediation proceedings vide Annexure P-1 (two leaves).**

**The act and conduct of learned Advocates of the parties and parties are highly appreciated. The mediation is successful. Therefore, Registry is requested to place the case before the Hon'ble Court for appropriated orders."**

9. Their Lordships of the Hon'ble Supreme Court **B.S. Joshi and others**vs. **State of Haryana and another**, (2003) 4 SCC 675, have held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It is well settled that the powers under section 482 Cr.P.C. have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Their Lordships have held as under:

> **"[6] In Pepsi Food Ltd. and another v. Special Judicial Magistrate and others ((1998) 5 SCC 749), this Court with reference to Bhajan Lal's case observed that the guidelines laid therein as to where the Court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.**
>
> **[8] It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomesnecessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and**

> **circumstances of each case whether to exercise or not such a power.**
> **[15] In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."**

10. Their Lordships of the Hon'ble Supreme Court **in Preeti Gupta and another** vs. ***State of Jharkhand and another***, (2010) 7 SCC 667, have held that the ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. Experience reveals that long and protracted criminal trials lead to rancor, acrimony and bitterness in the relationship amongst the parties. The criminal trials lead to immense sufferings for all concerned. Their Lordships have further held that permitting complainant to pursue complaint would be abuse of process of law and the complaint against the appellants was quashed. Their Lordships have held as under:

> **[27] A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in Inder Mohan Goswami and Another v. State of Uttaranchal & Others, 2007 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:-**
> **"Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid**

**down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."**

**[28] We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.**

**[35] The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.**

**[36]. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.**

**.....[37] The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of**

> **suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.**
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> **[38] We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."**

11. Their Lordships of the Hon'ble Supreme Court in **Jitendra Raghuvanshi and others**vs. **Babita Raghuvanshi and another,**(2013) 4 SCC 58, have held that criminal proceedings or FIR or complaint can be quashed under section 482 Cr.P.C. in appropriate cases in order to meet ends of justice. Even in non-compoundable offences pertaining to matrimonial disputes, if court is satisfied that parties have settled the disputes amicably and without any pressure, then for purpose of securing ends of justice, FIR or complaint or subsequent criminal proceedings in respect of offences can be quashed. Their Lordships have held as under:

> **"[13] As stated earlier, it is not in dispute that after filing of a complaint in respect of the offences punishable under Sections 498A and 406 of IPC, the parties, in the instant case, arrived at a mutual settlement and the complainant also has sworn an affidavit supporting the stand of the appellants. That was the position before the trial Court as well as before the High Court in a petition filed under**

**Section 482 of the Code. A perusal of the impugned order of the High Court shows that because the mutual settlement arrived at between the parties relate to non-compoundable offence, the court proceeded on a wrong premise that it cannot be compounded and dismissed the petition filed under Section 482. A perusal of the petition before the High Court shows that the application filed by the appellants was not for compounding of non-compoundable offences but for the purpose of quashing the criminal proceedings.**

**[14] The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In B.S. Joshi , this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.**

**[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 its 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 the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.**
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> **[17] In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.C.R.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore."**

12. Similarly, Hon'ble Supreme Court in **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others** *vs.* **State of Gujarat and another, (2017) 9 Supreme Court Cases 641,** wherein it has been held as under :

> **"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:**

**16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;**

**16.2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.**

**16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;**

**16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;**

**16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;**

**16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the**

**victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;**

**16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;**

**16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;**

**16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and**

**16.10. There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."**

Even if, the trial is allowed to be continued, as the parties have compromised the matter, there are bleak chances of conviction to secure the ends of justice.

13. Thus, taking into consideration the law as discussed hereinabove, I find that the interest of justice would be met, in case, the proceedings are quashed, as the parties have already compromised the matter, through mediation proceedings, which are made part of the record and they do not want to continue with the case, in order to maintain their relations cordial.

14. Accordingly, looking into all attending facts and circumstances, this Court finds that present is a fit case to exercise jurisdiction vested in this Court, under Section 482 of the Code and, therefore, the present petitions are allowed and FIR No. 0036 of2016, dated 24.02.2016 under Section 498A, 354 and 34 IPC, registered in Police Station Kangra, alongwith consequential proceedings in case No. 213 of 2018, titled State of H.P. vs. Anupam & others pending adjudication before the learned Judicial Magistrate1st Class, Kangra and FIR No. 0299, dated 25.12.2015, under Section 406 IPC, registered in Police Station Kangra, District Kangra, H.P. alongwith consequential proceedings in case titled State of H.P. vs. Anupam & others, case No. 135 of 2018, pending adjudication before the learned Additional Chief Judicial Magistrate, Kangra, are ordered to be quashed.

15. The petitions are accordingly disposed of alongwith pending applications, if any.

**(Chander Bhusan Barowalia)**
**Judge**

**2nd January, 2020**
*(virender)*