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(Via Video Conference)
C.R.A. 262 of 2017
Dinabandhu Mukherjee & Anr.
-Vs.-
The State of West Bengal
With
IA. No. CRAN 1 of 2021
Dinabandhu Mukherjee & Ors.
-Vs.-
The State of West Bengal

Mr. Antarikhya Basu
Mr. Debarshi Brahma
Mr. Sayan Mukherjee
Ms. Madhumita Basak
.....For the Applicant Nos.1 and 2
Mr. Sandip Chakraborty
Mr. Pratik Ghosh
..... For the Applicant No.3
Mr. Madhusudan Sur
Mr. Dipankar Paramanick
.....For the State

This case is appearing under the heading “To Be Mentioned” upon mentioning of the parties.

I have heard Mr. Antarikhya Basu alongwith Mr. Debarshi Brahma, learned counsel for the appellants, Mr. Sandip Chakraborty alongwith Mr. Pratik Ghosh, learned counsel for the de facto complainant/respondent-wife and Mr. Madhusudan Sur alongwith Mr. Dipankar Paramanick, learned counsel for the State.

On their submission, the appeal is taken up for consideration in terms of the compromise arrived at by and between the husband and wife. The appellants being husband and mother-in-law of the de facto complainant were convicted and sentenced for the charge under Section 498A/34 of the I.P.C.,

although they were acquitted of the charges under Section 307/34 of the Indian Penal Code by the impugned judgment and order dated 10.04.2017 passed by the Learned Additional District & Sessions Judge (Re-designated Court) at Bankura in Sessions Case No.07 (03)15 corresponding to Sessions Trial Case No.02(07) of 2015 arising out of Bankura Women Police Station Case No.95/14 dated 07.09.2014 which is under challenge whereby and whereunder the appellants were sentenced to rigorous imprisonment for two years and also to pay fine of Rs.5,000/- each in default clause to suffer simple imprisonment for a further period of six months for offence punishable under Section 498A of the Indian Penal Code.

Background leading to this case is that based on the complaint of de facto complainant/wife the specific case was started against the appellants who stood trial for the charges under Section 498A/307/34 of the Indian Penal Code.

On 17.01.2013 the complainant (P.W.1) married the appellant no. 1 as per Hindu rites and rituals. On professional score both the complainant i.e. P.W. 1 and the appellant no. 1 are Assistant Teachers of Government Schools. At the time of marriage as per the demand of the appellants cash Rs. 1 lakh, gold ornaments of worth Rs. 5 lakhs, utensils, computer, camera, almirah etc. were given by P.W. 1 to them. After marriage, P.W. 1 started residing in her matrimonial home but within few days of her marriage she was subjected to mental torture by the appellant no. 2 and other members of her-in-laws i.e. her sister-in-laws and husbands of the respective sister-in-laws. Initially the appellants and their family members used to criticize P.W. 1 by saying that

the articles which were given by the father at the time of her marriage were of substandard by nature and they started pressuring her to bring more money and ornaments from her paternal home particularly which she purchased from her salary prior to her marriage. Whenever P.W. 1 raised objection against such activities of the appellants and their family members she was restrained by the appellants and their family members from visiting her paternal home. In the meantime P.W. 1 became pregnant and the appellants and their family members started creating mental pressures on her by saying that if she gives birth to a female child then she should stay in her paternal home with the child permanently. Being unable to bear such mental torture P.W. 1 fell sick and the appellants started pressurizing the father of P.W. 1 i.e. P.W. 3, to take her daughter for treatment to Vellore. In the meantime, P.W. 1 was blessed with a baby girl and the moment she was blessed with a daughter, the appellants and their family members started perpetrating inhuman mental torture on her. In the month February, (year not mentioned) P.W. 1 along with her family members went to Vellore for treatment. However, the appellants refused to accompany her to Vellore. It was informed by the doctors at Vellore to P.W. 1 that she was a patient of 'neuro' but it was curable. After returning from Vellore, P.W. 1 found that the appellants stopped keeping all sorts of contact with her. Finding no alternatives P.W. 1 tried to get in touch with the appellants and they did not allow her to enter the matrimonial home. Seeing her conjugal life at stake, one day the complainant, i.e. P.W. 1 and her father, P.W. 3 went to her matrimonial home with a feeble hope that they (appellants) will accept her. Initially

the appellants did not allow her to enter the house but later on P.W. 1 managed to enter. Entering her matrimonial home when P.W. 1 stated that she will not leave her matrimonial home, at that time the appellant no. 1 became excited and with intent to kill her started throttling her. Somehow, P.W. 3, the father of P.W. 1 rescued her from the clutches of the appellant no. 1 but out of fear P.W. 3 could not say anything. Later on when P.W. 1 regained her senses the appellants drove them out from their home and while leaving her matrimonial home, P.W. 1 demanded her gold ornaments, passbook, cheque book etc. but both the appellants did not allow her to take those things back rather they forcibly kept back few sarees of her and Rs. 1 lakh.

On conclusion of trial, the learned Additional Sessions Judge, at Bankura, in Sessions Case No. 07(03)15 corresponding to Sessions Trial No. 02(07)2015 convicted the appellants for commission of the offences punishable under Sections 498A/34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5000/- in default to suffer simple imprisonment for further period of 6 months and further directed that all the sentences shall run concurrently. However, by the selfsame Judgment, the learned Judge was pleased to acquit the other 4 accused persons i.e. Jyotsna Chatterjee, Sukla Ganguly (the two sisters of the appellant no. 2) and Uttam Chatterjee and Shyamsundar Ganguly (the son-in-laws of the appellant no. 2). Further, the appellants were also acquitted from the charge under Sections 307 of Indian penal Code.

Being aggrieved by and dissatisfied with the judgment impugned, appellants preferred the instant appeal contending that

this appeal, the husband and the wife in particular entered into an amicable settlement stating that the appellant no.3 (wife) does not want to proceed with the criminal complaint leading to registration of the First Information Report being, Bankura Women Police Station Case No.95 of 2014 dated 07.09.2014 wherein the appellants were arraigned as accused persons for the offence punishable under Sections 498A/34 and under Sections 307/34 of the I.P.C.

However, it is contended that P.W. 1 stated in her cross examination that she stayed in her matrimonial home for a period of only four months since the date of her marriage (i.e. on 17.01.2013) and the reasons behind staying at her paternal home was as her pregnancy, doctor suggested her to have nutritious food. There is no iota of evidence on record to establish that the victim was subjected to any torture mentally and physically far less torture which may cause grave injury to the mind, health or body of the victim which may constitute offence punishable under Section 498A of the Indian Penal Code. Rather in her complaint, she failed to mention one single date when she was tortured by the appellants at her matrimonial home.

Although P.W. 3 and P.W. 4 narrated before the Investigating Officer i.e. P.W. 8 that the appellants used to torture their daughter for the demand of more ornaments or as she gave birth to a female child she was humiliated by the appellants or that once their daughter was assaulted by the appellant no. 1 as a result of which she became unconscious but from the deposition of the Investigating Officer P.W. 8 but such facts were never divulged by P.W. 3 and P.W. 4 before him at the time of

interrogation. Mere misbehaviour or demand for an article is not falling within the purview of Section 498A of the Indian Penal Code and something more is necessary to fasten an accused with criminal liability falling under Section 498A of the Indian Penal Code. As such judgment is bereft of legal and factual materials, is unworthy of acceptance. Admittedly, witnesses i.e. P.W. 1, P.W. 2, P.W. 3, P.W. 5 are relations of the deceased and as such they fall within the category of interested witnesses.

Now, the appellant no.3 (wife) and the appellant no.1 (husband) and the appellant no.3 (wife) agreed for a decree of mutual divorce and have file an application under Section 13B of the Hindu Marriage Act, 1955 before the learned District Judge, Bankura registered a Matrimonial Suit No. 95 of 2020. The terms and condition of the amicable settlement has been articulated and affirmed by the respective applicants in the application under Section 13B of the Hindu Marriage Act, 1955.

My attention is invited to Paragraph- 9(viii) of the application for settlement and in particular the averments made in Paragraph-10 of the application wherein it has been stated that the proceedings initiated by and between the parties against each other were out of misunderstanding and they have now mutually agreed to withdraw all the cases, proceedings, appeal, revisional application including the settlement before the Hon'ble Court.

Learned advocate for the husband/applicant/appellants referring to the observations made in paragraphs 6,9,10 of a decision in the case of *Arvind Barsaul (Dr.) and Ors. -vs- State of Madhya Pradesh and Anr.* reported in *AIR (2008) 5 Supreme Court Cases 794* submits that since the wife is not interested in the

prosecuting of the appellants condition of criminal proceeding would amount to abuse of process of law.

In the cited case, the judicial magistrate had convicted the appellants for the offence under Section 498A IPC and sentence them to imprisonment for 18 months and fine of Rs.100/- each in default to suffer further imprisonment for 10 days against which appeal was preferred before the Second Additional District and Sessions Judge wherein during the pendency of the appeal, parties had sorted out their differences and file three separate applications for recording the compromise in the criminal proceedings. But the appellate Court had rejected the compromise petition stating that the offence under Section 498A IPC is not liable of compromise.

In such set of facts, the Hon'ble Apex Court having regard to the inherent power of the Court and in exercise of the power under Article 142 of the Constitution deemed it fit to quash the criminal proceedings pending against the appellants emanating from the FIR lodged under Section 498A IPC.

The Hon'ble High Court of Punjab and Haryana in a decision of a case *Chhota Singh -vs- State of Punjab* reported in 1997 SCC OnLine P&H 200 : (1997) 2 RCR (Cri) 392 allowed an appeal by setting aside the conviction and sentences against the appellants for the offences under Sections 326/325/324 and 323 of the IPC and further bearing in mind the principle laid down in Criminal Misc. Case No. 11501-M of 1996 Titled *Sunil Kumar Yadav -vs- State of Punjab* holding that compromise is for the benefit of the parties and for the betterment of all concerned, it can be accepted,

because the parties are closely related and it will be a starting point in maintaining peace in the families.

Learned advocate for the appellants/applicants also refers to a decision in the case of *Kiran Tulshiram Ingale –vs- Smt. Anupama P. Gaikwad & Ors.* reported in 2006 SCC OnLine Bom 1391, to contend that relying in case of *B.S. Joshi's case, (2003) 4 SCC 675 : AIR 2003 SC 1386* and in case of *G.V Rao vs. L.H.V. Prasad (2000) 3 SCC 693 : AIR 2000 SC 2474*, the Bombay High Court quashed the criminal proceeding answering a reference to a question whether it is open for the High Court in which an application in exercise of inherent powers even in a case which has ended with an order of conviction after trial in the affirmative. It was holding that even in case of conviction, inherent powers can be exercised and criminal proceedings can be quashed.

It would be apt to take note of observation made in case of *G.V. Rao (supra)* which reads thus:-

"It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly extend which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about re-approachment are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different Courts."

Having regard to the principle laid down in the said decision and further in consideration of the judgment impugned before this Court and having regard to the fact that the applicant no. 3/wife is living separately for more than 7 years and the allegation at it

appears from the observation made in the impugned judgment is that she used to taunted for her fatty figure by her mother-in-law and having cursed that her breath would cause harm to her husband and for that she was not allowed to stay in her matrimonial home as she had given birth to a female child. Such petty allegations against the mother and the husband appears to be omnibus in nature, hence, the judgement impugned itself is liable to be set aside. Moreover considering the mutual settlement between the parties in their larger interest, the appeal is allowed together with the application being CRAN 1 of 2021 whereby parties have entered into a compromise.

In the result, criminal appeal being CRA 262 of 2017 along with the application being CRAN 1 of 2021 are disposed of.

All parties are to act on the server copy of this order duly down loaded from the official website of this Court.

(Shivakant Prasad, J.)