

CRM-M-28266-2020 (O&M)

Date of Decision: 07.04.2021.

Gaurav and others

...Petitioners

Vs.

State of Haryana and another

...Respondents

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Parminder Singh, Advocate for the petitioners.

Mr. Vivek Chauhan, Addl. AG, Haryana.

Mr. Munish Kumar Garg, Advocate for respondent No.2.

B.S. Walia, J. (VC),

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 482, Cr.P.C. is for quashing of FIR No.144 dated 05.12.2018, registered under Sections 323, 354, 406, 498-A, 506 IPC, at Police Station Women, Karnal, on the ground that the complainant/respondent No.2 had already lodged FIR No.77 dated 18.07.2018, under Sections 323, 354, 498-A, 506 IPC, at Police Station Women, Karnal in respect of the same grievance, besides cancellation report had been submitted in respect of the aforementioned FIR while qua FIR No.77 dated 18.07.2018, challan has been filed only under Sections 498-A and 506 IPC. Moreover, petition has been filed for quashing of the aforementioned FIR on the basis of compromise.

3. Vide order dated 17.12.2020, on request of learned counsel for respondent No. 2, the matter was referred for mediation. Pursuant thereto report of the learned mediator dated 11.01.2021 was received that the parties

order dated 25.02.2021, the parties were directed to put in appearance before the learned Illaqa / Duty Magistrate concerned on 12.03.2021 for recording of their statements. Pursuant to the recording of the statement of the parties report dated 23rd March, 2021 was submitted by the learned Judicial Magistrate, 1st Class, Karnal.

4. Brief facts of the case are that respondent No.2 was married to petitioner No.1 on 02.09.2016 but no child was born from the wedlock, relationship between the parties became strained due to incompatibility and temperamental differences and petitioner No.1 and respondent No.2 could not adjust with each other, resultantly, the parties started residing separately w.e.f. August 2017, eventually leading to respondent No.2 registering FIR No. 77 dated 18.07.2018 u/s under Sections 323, 354, 498-A, 506 IPC, at Police Station Women, Karnal as also FIR No. 144 dated 05.12.2018 U/s 323, 354, 506, 406, 498-A IPC, at Women Police Station Karnal. However, during mediation, the matter was amicably resolved on the terms and conditions contained in the settlement / compromise dated 11.01.2021 before the learned mediator. Settlement / compromise dated 11.01.2021 between the parties is taken on record and shall be read as an integral part of this order. Report of the learned Judicial Magistrate, 1st Class, Karnal reveals that the complainant / respondent No. 2 had entered into a compromise with the petitioners without any pressure and out of her own will and that she did not want to take any action against the accused and had no objection if the proceedings against the accused / petitioners were quashed. In the light of statement of the complainant as well as similar statement of the petitioners, the learned Judicial Magistrate 1st Class Karnal reported that in her opinion the compromise was genuine and both the parties had made the statements voluntarily, none of the accused had been declared a proclaimed person, no

civil or criminal proceedings were pending except proceedings for quashing of FIR No. 77 / 2018 u/s 323, 498A, 506 IPC registered at Police Station Karnal against accused Rambhaj and that statement of the parties in said FIR had been recorded as per directions of the High Court.

5. That as per the compromise, Annexure P/7 dated 11.01.2021, the following settlement was arrived at between the parties :-

“ 8. (a) It is mutually agreed between the parties that they will part ways peacefully by seeking decree of divorce by mutual consent.

(b) It is mutually agreed between the parties that the first party will pay Rs.18,00,000/- (Rupees Eighteen Lakh Only) to the second party as alimony for past, present and future. After the said payment, nothing shall be due against the first party. The second party shall have no claim in the property movable or immovable after the present settlement. There is no dispute with regard to dowry articles which already stood settled. However, it is mutually agreed that the first party will return the following gold article of second party:-

- (i) One gold set of tikka.
- (ii) One chain with tops and pandel.
- (iii) One chain of Gourav and two rings.
- (iv) One gold ring of brother and one ear rings given to sister-in-law.
- (v) One kitty set given to mother-Sushma and one gold ring given to father-Ram Bhaj.
- (vi) One silver plate, one katori and 17 coins.

In the same way, the second party will return one gold set with ear rings and one mangalsutra to the first party. It is agreed between the party that they will return honestly the items received on the first of motion hearing of petition under Section 13-B of the Hindu Marriage Act.

(c) The payment shall be paid in the following manner:-

(i) First party in order to show his bona fide has paid today a sum of Rs.40,000/- and second party has acknowledged the receipt of the same.

(ii) The first party will pay a demand draft of Rs.5,00,000/- (Rupees Five Lakh only) by way of demand draft in favour of Second Party on first motion statement in petition under Section 13-B of the Hindu Marriage Act. It is agreed between the parties that the petition under Section 13-B will be filed by them on or before 15.02.2021 at Jind. The parties will co-operate with each other in filing the petition. The parties will bear the expenses on their own of future litigation i.e. 13-B and quashing petition.

(iii) The second instalment of Rs.4,60,000/- (Rupees Four Lac Sixty Thousand Only) by way of demand draft at the time of quashing of FIR No.144 dated 05.12.2018 and FIR No.77 dated 18.07.2018.

(iv) The third instalment of Rs.8,00,000/- (Rupees Eight Lac Only) shall be paid by the first party to the second party by way of demand draft in the name of second party on the second motion statement at Jind on the date fixed by the Trial Court in 13-B Petition.

(vi) As regard the FIR is concerned, the first party has already filed the present CRM-M-28266-2020 for quashing of FIR No.144 in view of the fact that a similar FIR No.77 dated 18.07.2018 under same set of allegations is already pending. It is now agreed between the parties that second party has no objection if both the FIRs arising out between same parties be quashed in the present CRM-M to avoid filing of further litigation. The second party will file affidavit and suffer a statement to the effect that she has no objection if both the FIRs stated above are quashed against the first party and his family members. It is mutually

agreed between the parties that they will withdraw all the litigations immediately after filing of petition under Section 13-B of the Hindu Marriage Act, at Jind. It is further agreed that in case there is any pending litigation which do not find mention in the present settlement, the same shall also be withdrawn. It also includes any case filed by the family members of both sides out of share vengeance of the present matrimonial dispute.

(vii) Both the parties have agreed that they will not defame or malign the image of each other in the society and will live peacefully.

(viii) Both the parties undertakes that they will abide by and be bound by the agreed terms of the settlement agreement. In case of breach of any of the conditions so stipulated in the settlement agreement by either of the party, it will amount to contempt of Court and will have to face consequences.

(ix) In case the first party after making certain payments backs out from the compromise then in that case the amounts already paid shall stands forfeited and the second party shall have the remedy available to her as per law. In the same way, if the second party after receiving certain payments backs out from the conditions of settlement, she will be liable to pay double the money to the first party and the first party shall have the remedy as available to him as law.

(x) Both the parties will file their respective affidavits affirming the terms and conditions of the settlement, as also stating that the same have been arrived at out of their own free will and violation after fully understanding the contents thereof and there would be liable for penal action in case of breach.

9. By signing this agreement, the parties hereto state that they have no further claims or demands against each other with respect to the suit/claim/proceedings filed by them and all the disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation and shall not institute any other case against each other with reference to the present dispute.

10. That it has been further agreed between the parties that in case of necessity, both the parties shall be free to present the copy of the above agreement before any authority or the Court if the same is required to witness the execution of the settlement/agreement or to settle any pending controversy between the parties. ”

5. Learned Addl. AG, Haryana as well as learned counsel for respondent No.2 admit amicable settlement of the dispute between the parties in terms of compromise/ settlement, Annexure P/7 dated 11.01.2021 and submit that in view of the statement by the parties before the learned Judicial Magistrate, 1st Class, Karnal of the dispute having been amicably settled, they have no objection if the FIR and all consequential proceedings in respect thereto are quashed.

6. Learned Counsel have referred to the decision of Hon’ble the Supreme Court in ***B.S. Joshi and others vs. State of Haryana and another*** 2003 (2) RCR (Criminal) 888 as well as Hon’ble Full Bench of this Court in ***Kulwinder Singh and others vs. State of Punjab and another***, 2007 (3) RCR (Criminal) 1052. Relevant extract of the aforementioned decision’s is reproduced as under :-

Extract of the decision in B.S. Joshi’s case (supra)

“10. In *State of Karnataka v. L. Muniswamy & Ors.*

[(1977) 2 SCC 699], considering the scope of inherent

power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed 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. This Court said that the compelling necessity for making these observations is that without a proper realisation 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. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. 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 disputed 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 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. Answer clearly has to be in '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 *bonafides*.

11. In *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.* [(1998) 1 SCC 692], it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. 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.

12. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13. The observations made by the Court, though in a slightly different context, in *G.V. Rao v. L.H.V. Prasad & Ors.* [(2000) 3 SCC 693] are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, 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 erupt 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 rapprochement 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.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of Indian Penal Code.”

Extract of the decision in Kulwinder Singh’s case (supra)

“39. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is

limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

40. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.”

7. I have heard learned counsel for the parties and gone through the record. The law encourages amicable settlement of matrimonial litigation instead of the parties fighting it out in courts for years and in the process losing out on the prime of their youth in chasing their "cases" in different courts. Admittedly in the eventuality of compromise of a dispute, both sides stand to gain as the compromise not only brings peace and harmony between the parties, but also restores tranquility in society. Bringing an end to the criminal case would enable the parties to move on and rebuild their life. Besides, in the facts and circumstances of the case, ultimate chances of a conviction are bleak. Therefore, no useful purpose will be served by continuing the criminal prosecution. In the light of the position noted above and *to secure the ends of justice*, I am of the considered view that there is no

Section 482 Cr.P.C. to quash the FIR and all consequential proceedings emanating therefrom.

8. Accordingly, in the light of position noted above, the instant petition is allowed. FIR No.144 dated 05.12.2018, registered under Sections 323, 354, 406, 498-A, 506 IPC, at Police Station Women Karnal, along with all consequential proceedings emanating therefrom, are quashed. Parties are directed to adhere to the terms and conditions of the compromise/settlement, Annexure P/7 dated 11.01.2021. Failure to adhere to the same would not only render the defaulting party liable for proceedings under the Contempt of Courts Act, 1971 but would also entitle the aggrieved party to take out appropriate proceedings in respect thereto in accordance with law.

9. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

April 07, 2021

'rajesh'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No