

A.F.R.

Court No. - 70

Case :- APPLICATION U/S 482 No. - 27720 of 2019

Applicant :- Alok Jaiswal And Anr

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Manvendra Nath Singh

Counsel for Opposite Party :- G.A.,Manish Jaiswal

Hon'ble Sanjay Kumar Singh,J.

1. Heard Sri Manvendra Nath Singh, learned counsel for the applicants, Sri Birendra Kumar Singh, learned Additional Government Advocate assisted by Sri Prashant Kumar Singh, learned Brief holder for the State/opposite party no.1 and Sri Manish Jaiswal, learned counsel for the opposite party no.2 and perused the record with the assistance of learned counsel for the parties.

2. This application under Section 482 Cr.P.C. has been filed by the applicants with a prayer to quash the charge-sheet no. 34 of 2018 dated 23.07.2018 arising out of Case Crime No. 0005 of 2017 as well as cognizance order dated 05.04.2019 and proceedings of case no.8333 of 2018 (State Vs. Alok Jaiswal and others), under Sections 498A, 323, 504, 506, 406 IPC and 3/4 D.P. Act, Police Station Mahila Thana, District -Allahabad pending in the court of 18th Additional Chief Judicial Magistrate, Allahabad.

3. Filtering out unnecessary details, the basic facts, in brief, which are necessary to dispose of the case are encapsulated as under:-

The applicant no.1 is husband and applicant no.2 is brother-in-law (*Jeth*) of the opposite party no.2 Sonali Jaiswal. The marriage of

applicant no.1 was solemnized on 14.2.2013 with opposite party no.2, but their marriage was not successful, as a result thereof, the opposite party no.2 lodged FIR dated 22.1.2017 against the applicants, her father-in-law and sister-in-law making various allegations of beating, harassment and torture adopting different mods-operandi, on account of non-fulfillment of demand of dowry, etc. The Investigating Officer after investigation submitted charge-sheet dated 23.7.2018, on which, the Magistrate concerned took cognizance on 25.9.2018. The said cognizance order dated 25.9.2018 was challenged by the applicants through an application under Section 482 Cr.P.C. No. 773 of 2019, which was allowed by order dated 10.1.2019 of the co-ordinate Bench of this Court and cognizance order dated 25.9.2018 was quashed on the ground that the same was passed on a printed proforma without application of judicial mind and without considering any material brought on record by the Investigating Officer alongwith charge-sheet. By order dated 10.1.2019, liberty was also given to the Magistrate concerned to pass fresh order in accordance with law. Thereafter, A.C.J.M., Court No.18, Allahabad again passed the order dated 5.4.2019 taking cognizance of the offence and summoned the applicants afresh under Sections 498A, 323, 308, 342, 504, 506, 406 I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act to face trial. In the aforesaid background, the instant application has been preferred by the applicants.

4. On the previous hearing of this case on 25.7.2019, learned counsel for the applicants and opposite party no.2 informed the Court that now the parties concerned are willing to make

settlement in the matter. On the said submissions and on the request on behalf of applicants, time was granted to the applicants to make arrangement of payment to settle the dispute amicably.

5. In the aforesaid background, today a joint affidavit dated 5.8.2019 of the applicants and opposite party no.2 has been filed by contending that now parties concerned have settled their matrimonial dispute outside the Court and they have no grievance against each other. The contents of terms and conditions of settlement as mentioned in paragraph nos. 4, 5, 6, 7, 8, 9 and 10 of the joint affidavit dated 5.8.2019 are reproduced herein-below:-

“4. That it is submitted that it has been agreed by the opposite party no.2/Smt. Sonali Jaiswal that she will receive an amount of Rs. 22,00,000/- (Twenty Two Lakhs) from the applicant no.1, and in pursuance thereof, she will withdraw all the cases including the present case filed by her against the applicants and other family members.

5. That it is submitted that the applicant no.1, as well as opposite party no.2/Sonali Jaiswal also pledge not to prosecute each other or family members with regard to present matrimonial dispute between them, and both the parties shall also withdraw all the cases pending against each other (if any).

6. That it is submitted that the opposite party no.2/Smt. Sonali Jaiswal also agreed to withdraw all the cases which she filed against applicants and their family members, the detail of them are as under:-

(i) Present case i.e. Case Crime No.005 of 2017 under sections 498A, 323, 504, 506, 406 IPC and Section 34 D.P. Act, Police Station Mahila Thana, District Allahabad.

(ii) Case No. 489 of 2017 (Sonali Jaiswal Vs. Alok Jaiswal) under section 12/14 of Domestic Violence Act.

(iii) Case No. 659 of 2018 under Section 125 Cr.P.C.

7. That the opposite party no.2 has pledged to withdraw all the aforesaid cases, and further agreed not to prosecute the applicants or their family members in respect of present

matrimonial proceedings/dispute.

8. That the applicant no.1/Alok Jaiswal shall pay amount of Rs. 10 Lakhs on 08.08.2019 in the shape of two demand draft, each demand draft of Rs. 5 Lakhs.

The details of which are as under:-

(i) Demand draft No.251357 of Rs. 5 Lakhs drawn on 31.07.2019 at Bank of Baroda, Branch office Mughal Sarain.

(ii) Demand Draft No. 251358 of Rs. 5 Lakhs drawn on 31.07.2019 at Bank of Baroda, Branch Office, Mughal Sarain.

The Photo state copies of demand drafts are being filed herewith and collectively marked as Annexure No.1 to this Affidavit.

9. That both the aforesaid bank drafts shall be paid to Smt. Sonali Jaiswal and rest of the amount i.e. Rs. 12 Lakhs (Twelve Lakhs) shall be paid by applicant no.1 to opposite party no.2/Sonali Jaiswal after filing of the case under Section 13-B of Hindu Marriage Act before Family Court, Allahabad. The said amount of Rs. 12 Lakhs shall be deposited before the learned Family Court during the proceedings of case under Section 13-B of Hindu Marriage Act. It is made clear that the rest of the amount of Rs. 12 Lakhs will be paid by the applicant no.1, Alok Jaiswal to Smt. Sonali Jaiswal during the proceedings of case under Section 13-B of the Hindu Marriage Act.

10. That in view of the aforesaid facts, it is submitted that the present joint affidavit be taken on record and the applicant under Section 482 Cr.P.C. may be decided in the light of the facts mentioned above.”

6. Learned counsel for the applicants pursuant to aforesaid settlement produced two demand drafts of total amount of Rs. 10 lakhs (demand draft nos. 251357 of Rs. 5 lakhs dated 31.07.2019 and 251358 of Rs. 5 lakhs dated 31.07.2019 of Bank of Baroda in the name of Smt. Sonali Jaiswal) and handed over the aforesaid drafts of Rs. 10 lakhs to Sri Manish Jaiswal, learned counsel appearing on behalf of the opposite party no.2 before this Court.

Photocopy of the said demand drafts have also been brought on record as Annexure No.1 to the joint affidavit dated 5.8.2019.

7. Learned counsels appearing on behalf of the applicants and opposite party no.2 also submitted at the Bar that the parties concerned shall comply with the other terms and conditions of settlement, as mentioned in the joint affidavit dated 5.8.2019 in its letter and spirit. Sri Manish Jaiswal, learned counsel for the opposite party no.2 further submits that now opposite party no.2 has no grievance against the applicants and she has no objection in quashing the impugned criminal proceedings against the applicants.

8. After having heard the arguments of learned counsel for the parties, this Court feels it appropriate to refer some relevant judgments of the Apex Court, wherein the Apex Court has laid down the guideline for quashing of criminal proceedings on the basis of compromise and amicable settlement of matrimonial dispute between the parties concerned, which are as follows:-

8.1 The Apex Court in **Madhavrao Jiwajirao Scindia and others V. Sambhaji-rao Chandrojirao Angre and others**¹ 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

¹ (1988) 1 SCC 692

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.

8.2 The observations of the Apex Court in **G. V. Rao Vs. L.H.V. Prasad and others**² 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 escalate 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.

8.3 The scope and ambit of the power conferred on the High court by Section 482 Cr.P.C., read with Articles 226 and 227

² (2000) 3 SCC 693

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 others. Vs. State of Haryana and another**³ against the backdrop of a catena of earlier decisions. It was a criminal case arising out of marital discord. Noting, with reference to the decision in **State of Karnataka Vs. L Muniswamy**⁴ that in exercise of this "inherent" and "wholesome power", the touchstone is as to whether "the ends of justice so require", 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)

It was further noted :-

“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

3 (2003) 4 SCC 675

4 (1977) 2 SCC 699

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)

- 8.4 The Apex Court in another decision in case of **Smt Swati Verma Vs. Rajan Verma and others**⁵ where similar to the present case, the dispute including the criminal and divorce litigation between the sparring spouses had been decided on the basis of a compromise and the husband had paid Rs. 6 lakhs to his wife for the settlement, the apex Court had quashed the criminal proceedings under Section 498A and 406 IPC before the CJM, rendering the application under section 482 Cr.P.C before the Allahabad High Court infructuous. It had also granted the decree of divorce, rendering the divorce suit pending before the ADJ at Delhi infructuous, In that case in paragraph 7 the Hon'ble Supreme Court had observed:

"7. Having perused the records placed before us we are satisfied that the marriage between the parties has broken down irretrievably and with a view to restore

⁵ AIR 2004 SC 261

good relationship and to put a quietus to all litigations between the parties and not to leave any room for future litigation, so that they may live peacefully hereafter, and on the request of the parties, in exercise of the power vested in this Court under Article 142 of the Constitution of India, we allow the application for divorce by mutual consent filed before us under Section 13B of Hindu Marriage Act and declare that the marriage solemnized between the consenting parties on 13th June, 2001 at Delhi is hereby dissolved, and they are granted a decree of divorce by mutual consent.”

8.5 The Apex Court in case of **Parbatbhai Aahir @ Parbatbhai Vs. State of Gujarat**⁶ has also laid down the criteria for exercise of the jurisdiction under Section 482 Cr.P.C. by observing that:-

“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) 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;

(ii) 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.

(iii) 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;

6 (2017) 9 SCC 641

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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

(x) There is yet an exception to the principle set out in propositions (viii) and

(ix) 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.”

8.6 The Apex Court recently in a judgment dated 5.3.2019 rendered by a Bench of three Hon'ble Judges in case of **State of Madhya Pradesh Vs. Laxmi Narayan and others**⁷ considering previous judgments and section 320 Cr.P.C. has laid down guideline for exercising the jurisdiction under Section 482 Cr.P.C. in case of settlement of dispute between the accused and complainant. The para 13 of the said judgment is reproduced herein-below:-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society

⁷ AIR 2019 SC 1296

and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc., which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

9. The object of criminal law is primarily to visit the offender with certain consequences. He may be made to suffer punishment or by paying compensation to the victim, but the law at the same time also provides that it may not be necessary in every criminal

offence to mete out punishment, particularly, if the victim wants to bury the hatchet. If the offender and victim want to move on in a matrimonial cases, they may be allowed to compound the offences in terms of settlement. Considering the facts and circumstances of the case, as on date in the light of dictum and guideline laid down by the Apex Court as mentioned above, I think the interests of justice would be met, if the prayer of parties is acceded to and the criminal proceedings and other litigation between the parties is brought to an end.

On making settlement between the parties in a matrimonial dispute, the chance of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution against the applicants to continue.

10. As a fallout and consequence of above discussions, the impugned charge-sheet dated 23.07.2018 arising out of Case Crime No. 0005 of 2017, cognizance order dated 05.04.2019 and entire proceedings of case no.8333 of 2018 (State Vs. Alok Jaiswal and others), under Sections 498A, 323, 504, 506, 406 IPC and 3/4 D.P. Act, Police Station Mahila Thana, District -Allahabad pending in the court of 18th Additional Chief Judicial Magistrate, Allahabad against the applicants are hereby **quashed**.

11. The instant application under Section 482 Cr.P.C. is **allowed** in terms of compromise as mentioned above.

Order Date :- 8.8.2019
AK Pandey