

(2018) 10 J&K CK 0084

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 578 Of 2018

Ajay Dogra And Ors @APPELLANT@Hash State Of Jammu & Kashmir And Anr

Date of Decision : 26-10-2018

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 498A
Code Of Criminal Procedure, 1973 — Section 320, 482, 561A
Jammu And Kashmir Hindu Marriage Act, 1980 — Section 15
Indian Penal Code, 1860 — Section 498A

Citation : (2018) 10 J&K CK 0084

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Aprajita Sharma

Final Decision : Allowed

Judgement

1. In the instant petition filed under Section 561-A Cr. P.C, the petitioners seek quashing of FIR No. 31/2014 dated 26th May, 2014 under Section 498-A/109 RPC and the Complaint titled, "Chander Vandana Vs. Ajay Dogra and ors." moved by the respondent No.2, which is pending before the Court of learned Sub-Judge, Jammu, in view of the compromise arrived at between the parties since the matter pertains to a matrimonial dispute.

2. The factual matrix of the case is that the petitioner No. 2 is the mother, petitioner No. 3 is the brother, petitioner No. 4 is the sister-in-law of the petitioner No. 1 and the petitioner No. 5 is the cousin sister of the petitioner No. 1. Petitioner No.1 was married with respondent No.2 and due to some differences, respondent No.2 lodged an FIR against the petitioners and charge-sheet has been filed before the Sub Judge, Jammu. The matrimonial dispute arose between the petitioner No.1 and the respondent No. 2, who happened to be husband and wife and as such, they had filed a number of cases in different Courts. Now, petitioner No.1 and respondent No.2 have settled their dispute and mutually agreed to live separately and a compromise to this effect has also been arrived at between the parties.

3. It is also stated in the instant petition that the respondent No.2 and the petitioner No.1 have already obtained a Decree of Divorce on 12th September, 2018 in their favour under Section 15 of the Hindu Marriage Act, 1980. In view of the compromise arrived at between the parties, the FIR No. 31/2014 dated 26th May, 2014 and the Challan is required to be quashed in the interest of justice.

4. Ms. Syed Sheema, Advocate appeared before this Court on 19th September, 2018 on behalf of respondent No.2, made a statement before this Court that the parties have entered into amicable settlement. Accordingly, this Court directed the parties to appear before the Registrar Judicial of this Court along with their counsel for recording their statements on 24th September, 2018. Pursuant to the aforesaid order of this Court, parties along with their counsel appeared before the Registrar Judicial of this Court and their statements have been recorded accordingly.

5. In their statements, they have admitted the fact of compromise. Even divorce decree with mutual consent of the parties passed by Family Court, Jammu, also has been annexed, which reveals that parties have divorced each other on 12.09.2018.

6. Offence u/s 498-A RPC is non compoundable and so cannot be compounded in ordinary manner by trial court. In the case of B.S. Joshi and others v. State of Haryana and another reported in 2003 (4) SCC 675, it is held as under:-

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

The observations made by this 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.

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 counter productive 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 XXA of Indian Penal Code.

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."

7. In *Gian Singh v. State of Punjab* (2012) reported in 10 SCC 303 Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

"61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

8. The aforesaid law has been reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab* reported in (2014) 6 SCC.

The relevant observations of the Apex Court in *Narinder Singh's* case (*Supra*) are as under:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves."

9. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent no.2 agrees to the quashing of the FIR in question without any threat or coercion or undue influence and has stated that the matter has been settled out of her own free will. As the matter has been settled and compromised amicably, so there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under 561-A Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

10. In the light of the aforesaid discussion, this Court is of the view that notwithstanding the fact the offences under sections 498A /109 RPC are non-compoundable offences, there should be no impediment in quashing the FIR and challan under these sections, as parties have settled their dispute and even if trial is allowed, there would be no chance of conviction. The future trial would be mere formality.

11. In view of above, this petition is allowed and FIR no.31/2014 of P/S Women cell u/s 498-A/109 Cr.P.C and challan pending before Sub Judge (JMJC), Jammu, are quashed.