
(2009) 04 AHC CK 0444
In the Allahabad High Court

Ajay Kumar Kaushal

APPELLANT

Vs

State of U.P.Thru Secy.Home and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0444

Hon'ble Judges : Sunil Ambwani, J and Virendra Singh, J

Final Decision : Disposed Of

Judgement

Virendra Singh, J.

Learned standing counsel appears for respondent nos. 1 and 2. Issue notice to respondent no.3. Steps within a week.

The petitioner husband has prayed for a writ of mandamus directing the Additional Civil Judge/1st (Senior Division), Bijnor to decide Original Suit No. 9 of 2008 Ajai Kumar Kaushal vs. Smt. Bharti Singh @ Bhumika for divorce expeditiously.

It is contended that the respondent no.3 wife had filed a complaint against the petitioner under Section 498A of I.P.C.

In Criminal Misc. Application No. 13449 of 2008, the High Court, by its order dated 30.5.2008, referred the matter to "Allahabad High Court Mediation & Conciliation Centre" (Mediation Centre). It is stated that the parties agreed for mediation and that on 9.11.2008 both the parties namely Ajay Kumar Kaushal and Smt. Bharti Singh have settled their disputes. They have agreed in clause 6 of the settlement for separation/mutual divorce on a condition of permanent alimony amount of Rs. 3, 00, 000/ to be paid to Smt. Bharti Singh before the Court of Judicial Magistrate, Sambhal, District Moradabad in Criminal Case No. 308 of 2008. Sub clause (b) of clause 6 of the settlement provides that as soon as the bank draft of agreed amount is submitted by Sri Ajay Kaushal before the Court concerned and is received by Smt. Bharti Singh, the compromise will become effective, operative and executable. It was also agreed by them that the

compromise shall be treated to be the consent of Smt. Bharti Singh for mutual divorce in the proceedings as soon as she gets the amount. Shri Ajay Kaushal had agreed to withdraw his two complaints filed against Smt. Bharti Singh and her family members and Smt. Bharti Singh had agreed to withdraw her complaint against her husband. The settlement has been signed by the parties, their counsels and the Mediator.

The settlement has not been accepted by the Court hearing Misc. Criminal Application so far. It is contended by learned counsel for the petitioner that a bank draft of Rs. three lacs, a copy of which is annexed to this petition, drawn in favour of Bharti Singh, has been paid to her in the criminal court. He has filed a questionnaire from the Court of Additional Judicial Magistrate, Court No. 1, Sambhal to prove that the bank draft has been received by his wife Smt. Bharti Singh.

Ordinarily the settlement, which is a compromise between the parties, should not come into effect until it is accepted by the Court, which has referred the matter to the mediator centre. The other terms of the settlement, which do not concern the criminal misc., may however be put into effect by the parties in the concerned courts.

In paragraph 8 of the writ petition, it is stated that the Court has not complied with the settlement. However, there is no averment in the writ petition that the settlement was filed in the Court where the divorce petition is pending.

We are conscious of the fact that offence under Section 498A Cr.P.C. is a noncompoundable offence and that subordinate courts cannot drop the proceedings of the noncompoundable offence on the settlement arrived at between the parties. The superior courts may, in terms of the judgment in B.S. Joshi vs. State of Haryana AIR 2003 SC 1386, quash the complaint or the first information report on the basis of the settlement.

The settlement at the mediation centre may include settlement of other disputes between the parties, and the other pending proceedings. The parties therefore should be at liberty to get certified copy of the settlement to be used in the proceedings other than the criminal case. We therefore direct the Registrar General to issue certified copies of the settlement arrived at the Mediation & Conciliation Centre on payment of usual charges through the copying department of the High Court. If the petitioner applies, he will be issued a certified copy of the settlement to be used in the proceedings other than the criminal prosecution including those criminal cases which are compoundable. We also give liberty to the petitioner to press for acceptance of the settlement in the criminal misc. application No. 13449 of 2008.

List this matter again on 26.5.2009. A copy of the order be given to the Registrar General of the Court to issue a direction for issuance of certified copies of such settlements arrived at the Mediation Centre on payment of usual charges.