
(2019) 08 DEL CK 0287

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 3428 Of 2019

Akshat Bhardwaj & Ors

APPELLANT

Vs

State Of Delhi & Anr

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Indian Penal Code, 1860 — Section 34, 307, 406, 498A
Code Of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 08 DEL CK 0287

Hon'ble Judges : R.K. Gauba, J

Bench : Single Bench

Advocate : Satya Veer Sharma, B.K. Bhardwaj, Meenakshi Chauhan

Final Decision : Disposed Off

Judgement

R.K.Gauba, J

1. The second respondent was married to the first petitioner as per Hindu rites and ceremonies on 15.12.2015. The marriage ran into rough weather, the second respondent raising allegations of she having been subjected to cruelty and deprived of her stridhan, first information report (FIR) no.54/2017 having been registered on 10.02.2017 by police station Mandawali Fazalpur on her complaint involving offences punishable under Sections 498-A/406/34 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner), his father (second petitioner) and his mother (third petitioner). The matter is presently under investigation and charge-sheet is yet to be filed.
2. The parties were persuaded by their well-wishers to enter into an amicable settlement and have executed compromise deed dated 10.07.2019. The present petition has been filed for quashing of the proceeding arising out of the aforementioned FIR on that basis.

3. The second respondent has entered appearance and pursuant to the directions in the last order has submitted her affidavit sworn on 01.08.2019, with which copies of her passport and election voter I-card have been submitted as proof of identity. By the said affidavit, the second respondent has confirmed the settlement in terms of which she has moved back to live in the society of the first petitioner as his wife, both sides having agreed to bury their differences. Mr. Anoop Ralhan, father of the second respondent, who is present with her, on being asked, explained that the second respondent has difficulty in expressing herself clearly by spoken word, similar being the condition of the first petitioner who has difficulty in hearing as well. The first petitioner is accompanied not only by his advocate but also his father Mr. B.K. Bhardwaj. The father of the first petitioner, as also the father of the second respondent, confirm that the parties have agreed to the settlement voluntarily and are now living happily together. The father of the second respondent also confirms that she does not need any legal aid or advice, she with assistance of the family, which is well educated, having understood the terms on the basis of which the present prayer for quashing of the criminal case has been made. The copies of the driving licences of the father of each party have been taken on record as proof of their respective identity.

4. It is pertinent to note here that offence under Section 498A IPC is not compoundable. The parties are constrained to move this court for quashing on the basis of amicable resolution arrived at by them in the facts and circumstances noted above.

5. The scope and ambit of the power conferred on this court by Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings, has been the subject matter of scrutiny and comment by the Supreme Court in a catena of judgments. It is well settled that in exercise of this "inherent" and "wholesome power", the touchstone is as to whether "the ends of justice so require". This court had the occasion to trace the relevant law on the subject in a batch of matters led by *Yashpal Chaudhrani vs. State (Govt. of NCT Delhi)*, 2019 SCC Online Del 8179 wherein after taking note, inter alia, of *State of Karnataka v. L Muniswamy*, (1977) 2 SCC 699; *State of Karnataka v. M. Devendrappa*, (2002) 3 SCC 89; *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675; *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303; *Jitendra Raghuvanshi v. Babita Raghuvanshi*, (2013) 4 SCC 58; *K Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226; *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466; *State of Rajasthan v. Shambhu Kewat*, (2014) 4 SCC 149; *Parbhatbhai Aahir Parbatbhai Bhimsinhbhai Kurmur*, (2017) 9 SCC 641 and *State of Madhya Pradesh v. Laxmi Narayan and others*, (2019) 5 SCC 688; the broad principles were culled out as under :-

"55. Though the above-noted authoritative pronouncements of the Supreme Court have consistently laid down the broad principles governing the exercise of

power of the High Court under Section 482 of the Cr. PC for bringing an end to the criminal process, for addressing the concerns noted at the outset and future guidance of trial courts, some of the crucial ones may be flagged as under:-

(i). The inherent jurisdiction vested in the High Court, as recognized and preserved by Section 482 Cr. PC, is primarily to "prevent abuse of the process of court" or to "otherwise secure the ends of justice".

(ii). The ends of justice are higher than the ends of mere law, the prime principle governing the exercise of inherent power being "to do real, complete and substantial justice" for which the court exists.

(iii) It is the duty of the court to give "adequate treatment to the settlement between the parties" particularly in cases involving compoundable offences, the exercise of inherent power of the High Court under Section 482 Cr.P.C., however, not being inhibited in case of non-compoundable offences though, for the latter category, such power is to be "exercised sparingly and with caution".

(iv). If the criminal case has "overwhelmingly and predominantly civil character", particularly if it arises out of "commercial" (financial, mercantile, partnership or such other) transaction - and this would include the "cheque bouncing cases" under Section 138 N.I. Act - or "matrimonial dispute" or "family dispute", genuine resolution on equitable terms, in entirety, by the parties should result in criminal proceedings being quashed.

(v). Since the institution of marriage has an important role to play in the society, the court is to make every effort to encourage the parties to terminate such discord amicably and if it appears that elements of settlement exist, and the parties are willing, they are to be directed to the process of mediation to explore the possibility of settlement, it being desirable to do so even at the "pre-litigation stage".

(vi). While examining the prayer for quashing of a non compoundable offence, on the basis of settlement of the dispute between the wrongful doer and the victim, the High Court is to bear in mind as to whether the possibility of conviction is "remote and oblique" and further, if the continuation of the criminal case would lead to "oppression and prejudice" or "extreme injustice" for the accused.

(vii). The considerations which would weigh with Court include the antecedents of the accused, possible lack of bona fides, his past conduct and that includes the question as to whether he had earlier absconded and as to how he had managed with the complainant to enter into a compromise.

(viii). But, the High Court, when called upon to exercise the power under Section 482 Cr. PC to bring the criminal case to an end on the basis of settlement, must steer clear of intervention in "heinous" or "serious" offences, including those involving "mental depravity", as indeed "economic offences" affecting "the financial and economic well being of the State", such as murder, attempt to murder, extortion, forgery, rape, dacoity, financial or economic frauds, cases

under Arms Act, etc., the reason being that such offences are "not private in nature" but have "a serious impact upon society", and continuation of trial thereof is essential due to "overriding element of public interest".

(ix). The court, however, is not to go by mere use of label of a serious offence (e.g. offence under Section 307 IPC), it being open to it to examine, by scrutiny of the evidence gathered, to find as to whether there are sufficient grounds to frame charge for such offence and, in this view, it being "not permissible" to intervene till the matter has been properly investigated."

6. In a case where criminal proceedings arise essentially out of matrimonial dispute and the parties have decided to bury the hatchet, the court must examine if there is any likelihood of the criminal prosecution resulting in conviction. In fact-situation wherein the matrimonial relation has been brought to an end by mutual consent and the parties are eager to move on with their respective lives seeking closure and if there is nothing to indicate lack of bonafide on the part of any side, denial of the prayer for quashing the criminal case would restore acrimony rather than bring about peace. Allowing continuance of the criminal action would be fruitless and clearly an abuse of judicial process.

7. The case at hand passes the muster of the above-noted tests.

8. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR No.54/2017, under Sections 498-A/406/34 IPC of Police Station Mandawali Fazalpur and the proceedings emanating therefrom against the petitioners are hereby quashed.

9. The petition is disposed of accordingly.

10. Dasti under the signatures of the Court Master.