

(2021) 09 SHI CK 0105

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 470 Of 2021

Anil Kumar And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Hindu Marriage Act, 1955 — Article 13(B)
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 498A

Citation : (2021) 09 SHI CK 0105

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anoop Chitkara, J

This petition coming on for admission this day, the Court passed the following:

FIR No

Dated

Police Station

Sections

3/2017

9.1.2017

Amb, Distt. Una

498-A, 406, 323, 506, 34, IPC

1. Husband arraigned as an accused in the FIR captioned above, has come up before this Court under Section 482, Code of Criminal Procedure, 1973, for quashing the FIR and subsequent proceedings because they have compromised

the matter. He has arraigned his wife as 2nd respondent.

2. Ld. Counsel for the parties submitted that the parties have resolved the criminal dispute between them and seek quashing of the FIR mention above and closure of all consequential proceedings.

3. Ld. Additional Advocate General contended that the High Court could not quash FIR solely based on the settlement/compromise between the complainant and the accused, without even considering the gravity and seriousness of the offences alleged against the accused person because the offences alleged were against the society at large and not restricted to the personal disputes between the parties.

ANALYSIS AND REASONING:

4. Learned counsel for the parties have stated that the marriage between the victim and the accused stands resolved vide judgment dated 21.9.2021 and a decree of divorce by mutual consent under Article 13(B) of the Hindu Marriage Act, 1955 has also been passed. In the present case, parties have compromised the matter between them as per Annexure P-4.

5. The following aspects would be relevant to conclude this petition:-

a) The parties have amicably settled the matter between them in terms of the compromise deed (Annexure P-4). The 2nd respondent stated that she has no objection in case present FIR and consequent proceedings are quashed.

b) In the given facts, the occurrence does not affect public peace or tranquility.

c) The rejection of compromise may also lead to ill will, and the purpose of criminal jurisprudence is reformatory in nature and to work for bringing peace in family and society.

d) The pendency of trial affects career and happiness.

e) Even if this case is put to trial, the parties are likely to maintain the stand they have taken in this compromise, which is expected to result in the accused's acquittal.

f) Accused is the first offender.

g) The accused is facing prosecution for the last more than one and half years.

JUDICIAL PRECEDENTS ON QUASHING UNDER SECTION 498-A IPC:

6. In *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667, Hon'ble Supreme Court holds,

[13] The main question which falls for consideration in this case is whether the High Court was justified in not exercising its inherent powers under section 482 of the Code of Criminal Procedure in the facts and circumstances of this case ?

[14] This court in a number of cases has laid down the scope and ambit of courts' powers under section 482 Criminal Procedure Code. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Criminal Procedure Code can be exercised :

(i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

[15] Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions* [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *Director of Public Prosecutions v. Humphrys* [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

[18] The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution but court's failing to use the power for advancement of justice can also lead to grave injustice. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

[32] It is a matter of common experience that most of these complaints under section 498A Indian Penal Code are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bonafide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

[33] The learned members of the Bar have enormous social responsibility and

obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

[34] Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

[35] The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

CONCLUSION:

7. Upon perusal of the record, it appears that after marriage some misunderstandings cropped up between the couple and they have parted the company of each other. Now, they have also settled their disputes amicably, and no untoward incident has ever taken place.

8. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter. Given the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any fruitful purpose whatsoever. The Court is inclined to invoke the inherent jurisdiction under section 482 CrPC to quash the FIR and all subsequent proceedings in the peculiar facts and circumstances.

9. In Himachal Pradesh Cricket Association v State of Himachal Pradesh, 2018 (4) Crimes 324, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated."

10. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to quash the proceedings mentioned above. The FIR mentioned above is quashed, and all the consequential proceedings are also quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.