
(2019) 07 DEL CK 0529

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1613 Of 2019

Anmol Katyal & Ors

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 377, 406, 498A
Code Of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 07 DEL CK 0529

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

Bench : Single Bench

Advocate : G.K. Bharti, Meenakshi Chauhan, Samarth Tootia

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. The second respondent was married to the first petitioner as per Hindu rites and ceremonies on 14.07.2016. The marriage ran into rough weather, the second respondent raised allegations of she having been subjected to cruelty and deprived of her stridhan, first information report (FIR) no.419/2017 having been registered on 27.07.2017 by police station Rajouri Garden on her complaint involving offences punishable under Sections 498-A/406/34 read with Section 377 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner), his parents (second and third petitioner), the allegation qua offence under Section 377 IPC having been directed against the first petitioner (husband). The investigation is stated to have been concluded and charge-sheet has been prepared, though the same has not yet been filed.

2. The parties, in the meanwhile, have entered into a settlement upon reference being made in the context of Bail Application no.3934/2017 to Delhi Mediation Centre, Tis Hazari Courts. A copy of the settlement agreement dated 27.10.2017 has been filed on record and it is on the strength of the said settlement that the

present petition has been filed.

3. On notice, the second respondent has entered appearance with counsel and, in the wake of directions, she has submitted an affidavit sworn by her on 23.07.2019. Since the said affidavit was found to be not clear as to the terms of the settlement reached and the expectations therefrom, or the compliances made therewith, the matter was passed over so that the second respondent could file a fresh affidavit. The matter has been taken up in the post-lunch session. During the interregnum, the second respondent has sworn another affidavit which has been filed in the Registry and has been called for and placed on record.

4. The two affidavits of the second respondent, when jointly read, confirm the settlement of the dispute as above. The terms of the settlement include payment of Rs.13,50,000/- by the first petitioner to the second respondent as full and final settlement of all her claims on account of maintenance, and stridhan, etc. She has confirmed by her affidavit sworn today that an amount of Rs.8,10,000/- has already been paid to her. This payment, it is pointed out, was made before the Family Court, the second motion petition (HMA 174/2019) having been allowed and the marriage of the parties dissolved by decree of divorce by mutual consent on 07.02.2019.

5. The second respondent confirms that she has no objection to the prayer for quashing of the aforementioned FIR on the basis of the settlement, her expectation being only the payment of remainder of Rs.5,40,000/-. The first petitioner has handed over to the second respondent, a bankers cheque in her name bearing no.080909 dated 23.07.2019 for Rs.5,40,000/- drawn on State Bank of India, which she has received against acknowledgement.

6. The petition, thus, has been moved before this court invoking Section 482 of the Cr. PC seeking quashing of the FIR no.419/2017 under Sections 406, 498A, 34 IPC read with Section 377 IPC of Police Station Rajouri Garden.

7. It is pertinent to note here that offences under Section 498A IPC and 377 IPC are 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.

8. 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."

9. 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.

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

11. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR no.419/2017 under Sections 406, 498A, 34 IPC read with Section 377 IPC of Police Station Rajouri Garden and the proceedings emanating therefrom against the petitioners are hereby quashed.

12. The petition is disposed of accordingly.

Dasti to both sides.