

(2018) 11 DEL CK 0202

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2742 Of 2016 and Criminal Miscellaneous Appeal No. .11728 Of 2016

Anup Singh

APPELLANT

Vs

State (Govt Of Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 19-11-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Indian Penal Code, 1860 — Section 34, 406, 498A
Code of Criminal Procedure, 1973 — Section 173, 482

Citation : (2018) 11 DEL CK 0202

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

Bench : Single Bench

Advocate : Neeraj Bhardwaj, Sanjeev Sabharwal

Final Decision : Disposed Off

Judgement

1. The second respondent was married to the first petitioner as per Hindu rites and ceremonies on 28.06.2010. On 17.11.2011, she lodged first information report (FIR) no.354/2011 with police station Kirti Nagar alleging offences punishable under Section 498A, 406, 34 of Indian Penal Code, 1860 (IPC) against her husband, the petitioner. On conclusion of the investigation, police filed a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on which cognizance was taken, the said matter being pending on the file of the Metropolitan Magistrate. The parties were referred to Delhi Mediation Centre at Tis Hazari Court, Delhi where they agreed to amicably resolve the matter by entering into a settlement dated 11.08.2014 in terms of which the parties were to approach, as per the timelines indicated, the appropriate forum for obtaining a decree of divorce, they also having agreed, inter alia, for the criminal case arising out of the

aforementioned FIR to be sought to be quashed.

2. The petition, thus, has been moved before this court invoking Article 227 of the Constitution of India and Section 482 Cr. PC seeking quashing of

the FIR 354/11 under Sections 498-A, 406, 34 IPC of Police Station Kirti Nagar.

3. The second respondent on being served with the notice has appeared in person.

4. By order dated 14.09.2018, the parties were referred to Joint Registrar for recording of their statements. On 25.10.2018, the Registrar dealing with

the matter recorded the statement of the second respondent and of the investigating officer of the case. The identity of the second respondent has

been confirmed not only by the investigating officer ASI Tej Prakash, but also by the copy of aadhar card submitted by the second respondent. In the

said statement the second respondent confirms that she has settled the matter and that the petitioner has paid to her an amount of Rs.20,000/- in the

court on the date of recording of her statement, in full and final settlement, there being no dispute remaining.

5. In terms of the settlement dated 11.08.2014, the petitioner was to pay to the second respondent a total amount of Rs.1,00,000/-. The copy of the

proceedings recorded on 07.09.2015 on MHA Petition No.1439/2015 in the court of Principal Judge, Family Court, West District at Tis Hazari Courts,

Delhi, as submitted on record confirms that the petitioner had earlier paid to the second respondent and she had received in three installments, total

amount of Rs.80,000/-. The balance amount of Rs.20,000/- was paid to her on 25.10.2018, thus discharging the liability in terms of the settlement

agreement. She, however, submits that costs had been imposed at one stage in the sum of Rs.5,000/- which has not been paid so far. The counsel for

the petitioner, at this stage, tendered the amount of Rs.5,000/- in cash to the second respondent, which she has received at the hearing today.

6. 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.

7. 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, was examined by the Supreme Court in B.S.

Joshi and Ors. Vs. State of Haryana and Anr., (2003) 4 SCC 675, against the backdrop of a catena of earlier decisions. Noting, with reference to the

decision in State of Karnataka Vs. L Muniswamy, (1977) 2 SCC 699, that in exercise of this "inherent" and "wholesome power", the

touchstone is as to whether "the ends of justice so require", and it was observed thus :

"10. ... that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution

rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends

of mere law though justice had got to be administered according to laws made by the legislature. ...that the compelling necessity for making these

observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court

to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

(emphasis supplied)

8. The Supreme Court in B.S. Joshi (supra) further noted as under :-

"What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier

noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There

may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other

family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted

company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties

or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be

proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The

answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for

any valid reasons including lack of bona fides.â??

(emphasis supplied)

9. Holding that â??special features in ...matrimonial matters are evidentâ? and that it is â??the duty of the court to encourage genuine settlements of

matrimonial disputesâ?, referring to *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojiroo Angre*, (1988) 1 SCC 69,2 it was further observed

that :

â??11. ... Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by

allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.â??

(emphasis supplied)

10. In *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303, the Supreme Court contrasted the request for quashing of criminal proceedings on

the basis of settlement with the possibility of compounding of an offence and observed thus :-

â??57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as

compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under

Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding

of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby

while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is

guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be

acquittal or dismissal of indictment.â??

(emphasis supplied)

11. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be

further illustrated by the decision of a bench of three Honâ??ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita*

Raghuvanshi and Anr., (2013) 4 SCC 58, the following observations summarising the philosophy succinctly :-

15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on

considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties

have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not

be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important

role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live

peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of

law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite

to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of

material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the

proceedings ought to be quashed...â??

(emphasis supplied)

12. 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.

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

14. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 354/2011 under Sections 498A, 406, 34

IPC of Police Station Kirti Nagar and the proceedings emanating therefrom are hereby quashed.

15. The petition and the application filed therewith stand disposed of accordingly.

Dasti to both sides.