

(2016) 02 BOM CK 0129

In the Bombay High Court

Case No : Criminal Writ Petition No. 47 of 2002

Arun Atmaram Patil and Others

APPELLANT

Vs

Sandhya Arun Patil and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, Section 320 (8)
Dowry Prohibition Act, 1961 — Section 3, Section 4
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 109, Section 114, Section 323, Section

Citation : (2016) 2 AICLR 415 : (2016) ALLMRCri 4183 : (2016) 2 BomCR(Cri) 268 : (2016) 3 MhLJCri 350 : (2016) 2 RCRCivil 324 : (2016) 2 RCRCriminal 336

Hon'ble Judges : Dr. Shalini Phansalkar Joshi, J.

Bench : Single Bench

Advocate : Irfan A. Shaikh I/by Sachindra B. Shetye, Advocate, for the Appellant; Harshad Palwe, for the Respondent

Final Decision : Allowed

Judgement

Dr. Shalini Phansalkar Joshi, J.—1. This writ petition takes an exception to the order passed by the Additional Sessions Judge, Nashik on 17.8.2001, in Criminal Revision Application No. 332 of 2000. The said revision was preferred by the petitioners against the order passed by Judicial Magistrate First Class, Nashik on 19th August, 2000 below Exh.19 in Criminal Case No. 165 of 1997. By dismissing the revision application, learned Sessions Judge has confirmed the order passed by the learned Magistrate thereby refusing to act upon the pursis to bring on record that the matter was already compromised and settled between the parties, hence further proceedings are not tenable.

2. Brief facts of this writ petition can be stated as follows :-

The marriage of petitioner and respondent No. 1 had taken place on 16th May, 1981 at Nashik a per Hindu rites and ceremonies. In September, 1997, the petitioner No. 1 had filed a petition for divorce bearing HMP No. 209 of 1997

against respondent No. 1, on the ground of cruelty. During pendency of the said marriage petition, parties arrived at amicable settlement and the consent terms were executed between the parties. As a result thereof the said divorce petition came to be disposed off on the basis of pursis filed on 24th August, 1997. However, meanwhile respondent No. 1 had already filed Criminal Case No. 165 of 1997 against present petitioner No. 1 and his family members for the offence punishable under Section 494 read with Section 109, 114 and 34 of the Indian Penal Code.

3. In view of the settlement arrived at between the parties, an amount of Rs. 5,00,000/- was paid by petitioner No. 1 to respondent No. 1. Respondent No. 1 had agreed to withdraw the said criminal case bearing No. 165 of 1997. When respondent No. 1 received two demand drafts of Rs. 5,00,000/- i.e. one for Rs. 3,00,000/- and another for Rs. 2,00,000/-, she filed pursis at Exh.88 on the date of compromise itself i.e. 24th August, 1997 in R.C.C. No.165 of 1997 mentioning that she does not want to prosecute the said case in view of settlement arrived at, out of the Court. On the same day, learned Court verified the contents of pursis from respondent No. 1. However, at the relevant time, one Criminal Revision bearing No. 85 of 1999, arising out of the said Criminal Case, was pending in the Sessions Court at Nashik; wherein stay order was passed. Hence the learned Magistrate kept passing of order on pursis in abeyance and directed parties to produce the order vacating the stay by the Sessions Court.

4. On 5th May, 2000, the petitioner produced certified copy of the order passed in Criminal Revision No. 85 of 1999, showing that in view of the settlement, Revision Petition is already withdrawn. On the same day, petitioner also filed Application at Exh.19 praying to dismiss R.C.C. No.165 of 1997, in view of the pursis Exh.88, on the ground that the parties have arrived at settlement. On that day, respondent No. 1, was, however, absent and hence matter was kept for passing order on 8.5.2000. But subsequently neither respondent No. 1 appeared nor any order was passed on the said application till 19th August, 2000. On that day respondent No. 1 appeared in the matter and gave her say, mentioning that she has withdrawn her pursis dated 24.8.1999 and she wants to prosecute case. Respondent No. 1, however, did not give any reason for withdrawing the said pursis.

5. In view of her say, learned Magistrate was pleased to reject the application given for dismissal of the case on the ground of compromise between parties.

6. The said order was challenged before the Revisional Court. Revisional Court, by its impugned order, confirmed order of learned Magistrate, by holding that in order to dispose off the case on the basis of compromise arrived at between the parties under Section 320 (8) of Code of Criminal Procedure, consent of respondent-complainant was very much essential and without her consent matter cannot be compounded or disposed of. As respondent No. 1 has not given such consent, Revisional Court held that the case cannot be disposed of under Section 320 (8) of Code of Criminal Procedure.

7. Being aggrieved by the same, the petitioners have preferred this Writ Petition, requesting inter alia for quashing and setting aside entire proceeding bearing R.C.C. No. 165/1997 pending on the file of learned Magistrate.

8. In this writ petition, I have heard learned counsel for petitioners and respondents and also perused the documents which are produced on record. These documents are more than self speaking to reveal that the matter was amicably and effectively compromised between the parties on 24.8.1999. The terms of compromise are reduced in writing and executed before Notary by all parties. The execution of consent terms is not disputed also. As per certified copy of said consent terms arrived at between parties, which is produced on record of this Court and also of the trial Court and of revisional Court, it was agreed between the parties that respondent No. 1 will accept amount of Rs. 5,00,000/- towards her claim of maintenance and residence and in lieu thereof, she has given up all her rights in the property of the petitioners and also her right of maintenance. It was further agreed between parties that in view of the compromise arrived at between parties, petitioner No. 1 shall withdraw R.C.S. No.474 of 1996. The material clause in consent terms is Clause No. 7, according to which respondent No. 1 herein has agreed to withdraw Criminal Case No. 165 of 1995 and also suit No. 11 of 1997. By way of mutual consent, it was further decided that no further criminal action will be taken by one party against another party. As per clause No. 8 of the said compromise, it was further agreed that the petitioner No. 1 and respondent No. 1 would also dispose of HMP No. 209 of 1997, filed by petitioner No. 1 against respondent No. 1. As per clause 9 of the consent terms, petitioners also agreed to withdraw Criminal Cases bearing No. 319/1998, 320/1998, 321/1998 and Criminal Revision No. 85 of 1999 filed by them against respondents for defamation. As per clause No. 10 of the consent terms, it was further agreed that both the parties will withdraw all the cases, suits and allegations against each other.

9. Thus, the parties had decided to give quietus to all the litigations pending between them. It is not disputed that parties have also acted upon these consent terms which were duly executed before the Notary. On the basis of said consent terms, HMP No. 209 of 1997 was disposed off on the same day i.e. 24.8.1999. There is specific order passed on the compromise pursis filed in HMP No. 209 of 1997, that both parties are present and admit the contents of pursis; therefore, the petition is disposed off in view of compromise pursis.

10. It is also not disputed that in pursuance of the consent terms arrived at between the parties, an amount of Rs. 5 lacs was paid by the petitioner No. 1 vide D.D. No.027365 dated 10.8.1999 for Rs. 3,00,000/- and D.D. No.027366 dated 10.8.1999, for Rs. 2,00,000/-. Respondent No. 1 has received the said amount and there is no dispute on that score also. Even Criminal cases for defamation bearing Nos. 319/1998, 320/1998 and 321/1998 filed by the petitioners against respondent No. 1 were also withdrawn.

11. It is pertinent to note that on the very day itself, pursis was filed in R.C.C. No.

165 of 1997, and it was brought to the notice of the Court that matter was compromised between the parties. Only because Revision Application No. 85 of 1999 arising out of the said case, was pending in Sessions Court, Nashik, wherein stay order was passed, it appears that no order of disposing of the R.C.C. No. 165 of 1997, was passed on that day and the pursis was kept for passing further orders; though it was read and recorded. Subsequently, however, when the petitioner withdrew Criminal Revision No. 85 of 1999 and thus, the stay order was vacated, respondent No. 1 withdrew her stand and consent and insisted on prosecuting Criminal Case. Thus, it is clear that the petitioners have acted upon contents of compromise pursis arrived at between parties, even initially respondent No. 1 has also acted upon the same. Only subsequently, she has withdrawn her consent for disposal of R.C.C.165 of 1997. The question before this Court is whether this conduct on the part of respondent No. 1 can be permitted and prosecution of petitioners in R.C.C. No. 165 of 1997 can be allowed which is clearly an abuse of process of law.

12. Learned counsel for respondent No. 1 has submitted that consent terms in the present case were only notarized, but not filed before the court and secondly permission from the Court was not obtained for the purpose of compounding offence, only pursis was filed. Therefore, according to him, learned Revisional Court has rightly rejected the said pursis. However, this submission can hardly be accepted once both the parties have already acted upon these consent terms and execution thereof is also not denied. This conduct of respondent No. 1 of backtracking from her consent needs to be deprecated.

13. In this respect, learned counsel for petitioner has relied upon two judgments of Supreme Court i) Mohd. Shamim and ors -vs-Smt. Nahid Begum and anr, , (2005) 3SCC 302, and ii) Ruchi Agarwal -vs-Amit Kumar Agrawal and others, , (2005) 3 SCC 299. Facts of these cases are more or less of similar nature. In the facts of these two authorities also, compromise was arrived at between the parties and on the basis thereof the divorce was obtained and the petition under Section 9 of Hindu Marriage Act was withdrawn. Even case under Section 125 of Code of Criminal procedure was withdrawn. Thus, parties had partially performed part of the compromise. But case under Section 498A, 323, 506 which was agreed to be withdrawn, was tried to be contested, though in the compromise pursis, she had undertaken to withdraw all proceedings, Civil and Criminal filed and initiated by her against the respondent within one month of the compromise deed which included the complaint under Section 498A, 323 and 506 IPC and Section 3 and 4 of the Dowry Prohibition Act.

14. In that background, Apex Court held that when one party has acted on the consent terms to its disadvantage, the other party having received the benefits which she wanted, as in the present case, she cannot be allowed to backtrack on the consent terms, as it would amount to harassment of the first party. According to Supreme Court, it would be an abuse of process of the Court, if criminal proceedings are allowed to be continued, in such circumstances. In the words of

the Apex Court,

"We are of the opinion that appellant having received the relief, she wanted without contest on the basis of terms of compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that criminal complaint from which this appeal arises was filed by the wife only to harass the respondents."

15. Accordingly Supreme Court was pleased to quash the proceedings. Here in the case also when respondent No. 1 has initially filed pursis in the trial Court for compounding of the offence and subsequently has withdrawn the same, simply for the reasons best known to her and that too, after taking undue advantage on the basis of such compromise pursis, in pursuance of which petitioner had withdrawn criminal cases filed against her and her family members. In pursuance of which the petitioner had paid her substantial amount of Rs. 5 lacs towards her maintenance; in pursuance of which, even Divorce Petition also disposed of, at this stage, respondent No. 1 cannot be allowed to go back and take disadvantage of technical problem on account of which case could not be disposed of earlier. The continuation of the criminal proceeding before trial Court, in such situation would clearly amount to abuse of process of law. Therefore, said proceedings are required to be quashed and set aside. Hence order.

Order

I) Writ Petition is allowed.

II) The Criminal Proceedings bearing R.C.C. No.165 of 1997 pending on the file of Judicial Magistrate First Class, Nashik are hereby quashed and set aside.

III) Rule made absolute in above terms.