

(2006) 09 AHC CK 0097

In the Allahabad High Court

Case No : Criminal M. Application No. 2195 of 2006

Ausaf Ahmad Abbasi and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 323, 324, 498A, 504, 506

Citation : (2007) 1 ACR 610

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : T.P. Singh and Siddharth Singh, for the Appellant; T.A. Khan, A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—Afaq Ahmad Abbasi (applicant No. 2), alongwith his wife Smt. Qaisar Sultana (applicant No. 4), two sons Imtiaz Ahmad Abbasi (applicant No. 3), Ausaf Ahmad Abbasi (applicant No. 1), two daughters Smt. Farzana Jalali and Smt. Saima Zeeshan alias Pinki (applicant Nos. 5 and 6), alongwith two others Parvez Ahmad Abbasi (applicant No. 7) and Smt. Kausar Fatima (applicant No. 8) have approached this Court through this application u/s 482, Cr. P.C. with the prayer to quash the criminal proceedings in Case No. 32239 of 2005, State v. Ausaf Ahmad and others, under Sections 498A, 323, 324, 504 and 506, I.P.C. and Section 3/4 of D.P. Act, P.S. Mahila Thana, district Allahabad, arising out of Crime No. 16 of 2005. which is pending before the C.J.M., Allahabad. Their further prayer is for stay of their harassment from surrendering and seeking bail in the Court.

2. The preceding facts, which have given rise to the present application are encapsulated as follows:

Smt. Naaz Askari d/o Late S. N. Mahmood was married to the applicant Ausaf Ahmad Abbasi s/o the applicants Afaq Ahmad Abbasi and Smt. Qaisar Sultana on 11.1.2003 and the couple was blessed with a son Master Umar Abbasi on

3.1.2004 in City Nursing Home, Allahabad. An F.I.R. was lodged on 19.9.2005, at P.S. Mahila Thana, Civil Lines, district Allahabad by the wife Smt. Naaz Askari as Crime No. 16/05 under Sections 498A, 323, 324, 504 and 506, I.P.C. and Section 3/4 D.P. Act against the applicants. Applicant Nos. 3, 5 and 6 Imtiaz Ahmad Abbasi, Farzana Jalali and Saima Zeeshan got their arrest stayed from this Court in the aforesaid crime number. The police of P.S. Mahila Thana investigated the offences and submitted a charge-sheet against the applicants in the Court of C.J.M., Allahabad which was registered as Case No. 32239 of 2005 before the C.J.M., Allahabad. The order sheet of the aforesaid case indicates that the accused persons were not present after the issuance of summons and therefore, they were resummoned by the trial court and 6.3.2006 was fixed in the case. At this juncture the present application u/s 482, Cr. P.C. was filed on the ground that the parties have entered into a compromise and therefore, none of them wanted to litigate the matter any further and the proceedings be quashed. In support of their contention the applicants have filed an application dated 31.1.2006 (Annexure-2), filed by the informant Smt. Naaz Askari. The said application is supported by an affidavit dated 30.1.2006 (Annexure-4). In the said affidavit the informant has mentioned that she had lodged an F.I.R. against the applicants on the basis of which some of the accused persons were arrested and were bailed out and some of the accused persons got their arrest stayed from this Court. She has further averred in the said affidavit that due to the intervention of maternal uncle Ausaf Ahmad Abbasi her husband divorced her and had also returned her marriage gifts alongwith Mahar, ornaments, clothes etc. and no relationship of husband and wife exists between them. She has further stated that since marital relation has come to an end, therefore, she does not want to litigate and prosecute the accused. Annexure-5 to the affidavit filed in support of this application is the compromise deed, which has been signed by Smt. Naaz Askari (wife of Sri Ausaf Ahmad Abbasi) detailing the terms of the compromise and on the conditions entered into between the spouses. The said compromise deed is also signed by S. N. Hameed and Imtiaz Ahmad Abbasi and is dated 31.10.2005. It is mentioned in the said compromise deed that there was some misunderstanding between the spouses and their relationship reached to a juncture of no return and for them it become impossible to live together. Due to the aforesaid reason the husband brought his wife to her parental house and since then she is living alongwith her parents. Husband Ausaf Ahmad Abbasi or his parents did not call Smt. Naaz Askari back. The wife came to know that her husband has filed a divorce case in district Gorakhpur, which is pending. Smt. Naaz Askari had lodged the F.I.R. as mentioned above against her husband and his family members. Some relatives and well-wishers of both the families intervened into the matter, as a result of which both the parties agreed to enter into a compromise and consequently they entered into a compromise on the conditions that the marriage between informant Naaz Askari and Ausaf Ahmad Abbasi stood dissolved by divorce and both of them are free to live according to their wishes. The second condition of the compromise deed was that the wife would get Rs. 5 lacs from her husband through bank draft of various

denominations which was to be kept with Islam Ansari advocate of Sameera Hotel Allahabad and would be handed over to the wife by him after all the litigations between them is settled. It was also mentioned that the wife had received Mahar as well as the expenses of marriage, maintenance amount, maintenance of Iddat period ornaments and clothes etc from the husband Ausaf Ahmad Abbasi and no article belonging to the wife Naaz Askari is left with the husband. It was also stipulated that the child Mohd. Umar will live with his mother Naaz Askari and Ausaf Ahmad will give Rs. 1,500 per month to Respondent No. 2 for his maintenance and education. After the attainment of majority if the child would like to live with his father, then mother will have no objection. It was also stipulated in the said compromise that the wife would get his case withdrawn which she had instituted through the aforesaid F.I.R. at Mahila Thana, Civil Lines Allahabad and husband will also get his divorce case withdrawn and both the parties will not take any action of any kind against each other in future. Annexure-6 to this application is the copy of the divorce Case No. 410/05 filed by the husband and Annexure-7 is the order of the Court deciding the said divorce suit on the basis of above mentioned compromise and consigning the file by an order dated 30.1.2006. Annexure-8 is the copy of the charge-sheet against the applicants.

3. A short counter-affidavit has been filed by Smt. Naaz Askari as deponent in this Criminal Misc. Application wherein she has admitted that she has entered into a compromise and that she does not want to prosecute the applicants. In support of her contention she has filed a copy of her affidavit filed before the C.J.M., Allahabad on 30.1.2006, wherein she has stated that she does not want to prosecute the accused persons and the case may be consigned and she has got no objection against the said consigning of the case. Supplementary-affidavit has also been filed on behalf of the applicants wherein a copy of the order sheets of the Criminal Case No. 32239/05, State v. Ausaf Ahmad Abbasi pending before the C.J.M., Allahabad has been appended.

4. I have heard Sri T.P. Singh, learned senior counsel assisted by Sri Siddharth advocate on behalf of the applicants and Sri T.A. Khan on behalf of the informant Smt. Naaz Askari and learned A.G.A.

5. This application has also been filed by Parvez Ahmad Abbasi and Smt. Kausar Fatima besides aforementioned six applicants. Since the aforesaid two persons Parvez Ahmad Abbasi and his wife Smt. Kausar Fatima are not the charge-sheeted accused and no cognizance in their respect had been taken by the C.J.M., Allahabad in the aforesaid case No. 32239/05 hence this application is not maintainable on behalf of the aforesaid two persons. Consequently this application stands dismissed in respect of Parvez Ahmad Abbasi and Kausar Fatima as being not maintainable.

6. So far as other applicants are concerned, Sri T.P. Singh as well Sri T.A. Khan, learned Counsel for the rival parties contended that since both the parties have entered into a compromise, therefore in the fitness of things it will be

appropriate that criminal proceedings against the applicant should not go on and consequently this Court in exercise of its inherent power quash the said criminal proceedings.

7. Both the learned Counsel relied upon a judgment rendered by Supreme Court B.S. Joshi and Others Vs. State of Haryana and Another, . In the aforesaid judgment the Apex Court has held that:

We are, therefore, of the view that if for the purpose of securing the ends of justice quashing of F.I.R. becomes necessary Section 320 would not be a bar to the exercise of power of quashing.

8. The Apex Court in para 10 of the aforesaid judgment has further held thus:

In State of Karnataka v. L. Muniswamy considering the scope of inherent power of quashing u/s 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash the proceedings if it comes to the conclusion that the ends of justice so require. It was observed 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. This Court said 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..... 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.

9. Supreme Court has further held in para 12 of the aforesaid judgment as follows:

The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

10. It has been further observed in para 13 of the aforesaid judgment as follows:

There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different Courts.

11. In para 14 of the aforesaid judgment Apex Court has further held:

The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

12. Thus applying the above observations of the Apex Court in the factual matrix of the present case it is to be seen that in this case the parties have exchanged their pleasantries and the relationship between husband and wife has already been severed by a compromise divorce decree passed by a competent civil court. There has been provision for rearing up the child by both the parties in the compromise deed and there does not exist any thing in between them as a married couple. In the fitness of things and in the said circumstances when the litigating parties do not want to litigate over the matter, it will not be in the interest of justice to waste the time of trial court to go into the niceties of the trial. Moreover in the present scenario the chances of conviction of accused persons are a remote possibility. Informant herself is not ready to depose against the accused persons.

13. In the background of all the circumstances stated above and keeping in view the law laid down by the Apex Court in the aforesaid case *B. S. Joshi and Ors. v. State of Haryana and Anr. (supra)*, I think it appropriate to exercise my inherent power u/s 482, Cr. P.C. to quash the criminal proceedings of Case No. 32239 of 2005, *State v. Ausaf Ahmad and others*, under Sections 498A, 323, 324, 504 and 506, I.P.C. and Section 3/4 of D.P. Act, P.S. Mahila Thana, district Allahabad, arising out of Crime No. 16 of 2005, pending before the C.J.M., Allahabad against the applicants.

14. Resultantly this application is allowed. The criminal proceedings of Case No. 32239 of 2005, *State v. Ausaf Ahmad and others*, under Sections 498A, 323, 324 and 504, I.P.C. and Section 3/4 of D.P. Act, P.S. Mahila Thana, district Allahabad, arising out of Crime No. 16 of 2005, pending before the C.J.M., Allahabad is hereby quashed.