
(2010) 01 MP CK 0056
In the Madhya Pradesh High Court

Bhavuk Sharma and Others	Vs	APPELLANT
Anju Sharma (Smt.) and Another		RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 142
Criminal Procedure Code, 1973 (CrPC) — Section 125, 302, 320, 406, 482
Dowry Prohibition Act, 1961 — Section 3, 4, 9
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 323, 482, 498, 498A, 506

Citation : (2010) ILR (MP) 1493 : (2010) 1 MPHT 499 : (2010) 2 MPLJ 385

Hon'ble Judges : Piyush Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Piyush Mathur, J.

This petition u/s 482 of Cr.PC has been filed in relation to an order passed on date 23-12-2009 by the Judicial Magistrate First Class, Gwalior in Criminal Case No. 6902/2007 pending before the Court, which arose from Crime No. 15/2007 registered by the Police Station (Mahila Thana), Padav u/s 498A, IPC read with Section 4 of the Dowry Prohibition Act.

The petitioners Bhavuk Sharma, Smt. Mohini Sharma and Shri Mahesh Chandra Sharma are facing a Criminal Trial before the Competent Court in relation to registration of the offence against them, who had entered into a compromise with the complainant Smt. Anju Sharma (who was married with the petitioner Bhavuk Sharma on date 7-7-2003) that their matrimonial dispute and other disputes have been mutually compromised. An application was moved u/s 320 of Cr.PC before the JMFC in the Criminal Case No. 6902/2007, whereby the petitioners have prayed to the Court, that the offence registered u/s 498A, IPC read with Section 4 of Dowry Prohibition Act may be compounded, however, the learned Court below, while finding the offence u/s 498A to be non-compoundable

had dismissed the application vide order dated 23-12-2009.

The petitioners have placed on record a copy of the judgment dated 6-1-2010 passed in Case No. 38/2008/Hindu Marriage Act, by the IVth Additional District Judge, Gwalior, where on the basis of the compromise, entered into between the husband and wife, a decree of divorce has been granted in terms of Section 13B of Hindu Marriage Act, wherein the fact of complete compromise of Civil and Criminal Liability was disclosed before the Family Court.

Petitioners have also submitted an independent application herein containing the terms of compromise, in terms of Section 302(2) of Cr.PC by subscribing their affidavits to substantiate the fact of mutual compromise, which demonstrates that the civil and criminal dispute subsisting initially between the husband and the wife have been compromised and no dispute exists between them. The judgment of Family Court, whereby the decree of divorce had been granted to the husband and the wife also disclose the fact of payment of Rs. 8.50 lacs to the wife as also to the daughter, whereafter no dispute subsists between the parties.

Shri Neeraj Kalgore, learned Counsel for the petitioner, Smt. Manjula Goswami, learned Counsel for the respondent No. 1 and Shri Mukund Bharadwaj, appearing on behalf of State/respondent No. 2 have made their submissions about the scope of the powers of the High Court in ordering for compounding of the offence as also for quashment of the proceedings before the Criminal Court, in view of the compromise arrived at between the Litigant Parties. I have carefully examined the documents placed on record and the submissions advanced on behalf of the parties.

The Hon''ble Supreme Court while examining the scope of the inherent powers available u/s 482 of Cr.PC in relation to the compounding of the matrimonial dispute has observed in the case of B.S. Joshi and Others Vs. State of Haryana and Another, , that the matrimonial matters could be compromised with a view to encourage genuine settlements of the disputes. The relevant Paragraphs 11 and 14 are quoted herein below:

11. In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, it was held that while exercising inherent power of quashing u/s 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. 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.

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

The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad are very apt for determining the approach required to

be kept in view in a matrimonial dispute by the Courts. It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. 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.

There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interest 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.

In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code.

The Hon'ble Supreme Court in the case of Ruchi Agarwal Vs. Amit Kumar Agrawal and Others, , has further considered the scope of the powers available to the Court u/s 482 of Cr.PC as also power available to the Supreme Court under Article 14 of the Constitution of India in relation to the quashment of the proceedings regarding matrimonial dispute of the Litigating Parties, where the Supreme Court has found that for doing complete justice, the criminal proceedings could be quashed in the event of compromise being arrived at between the parties. The relevant Paragraphs 5 to 9 are quoted hereinbelow for ready reference:

5. In the compromise petition, referred to hereinabove, both the parties had agreed to withdraw all the civil and criminal cases filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No. 63 of 2002 on the file of the Family Court, Nainital which was a complaint filed u/s 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant and on the basis of the terms of the compromise, the said

case came to be dismissed. However, so far as the complaint under Sections 498A, 323 and 506, IPC and under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject-matter of this appeal, the appellant did not take any steps to withdraw the same. It is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

From the above-narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received stridhan and maintenance a lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings, civil and criminal, filed and initiated by her against the respondents within one month of the compromise deed, which included the complaint under Sections 498A, 323 and 506, IPC and under Sections 3 and 4 of the Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent husband agreed to withdraw his petition filed u/s 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

It is based on the said compromise the appellant obtained a divorce as desired by her u/s 13B of the Hindu Marriage Act and in partial compliance with the terms of the compromise she withdrew the criminal case filed u/s 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

Learned Counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the abovementioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her stridhan properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed u/s 125. It is true that she had made a complaint in writing to the Family Court where Section 125, Cr.PC proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said Court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned Counsel

for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the Court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash the proceedings arising from criminal case, Cr. No. 224 of 2003 registered in Police Station, Bilaspur (District Rampur) filed under Sections 498A, 323 and 506, IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.

In yet another judgment reported as Mohd. Shamim and Others Vs. Smt. Nahid Begum and Another, , the Supreme Court while considering the Scope of the power of quashment of FIR in a criminal dispute has found that the continuance of the proceedings before Criminal Court, in the event of the Agreement of the parties would be an abuse of the process of the Court. The relevant Paragraphs 12 to 16 are quoted hereinbelow:

12. In view of the fact that the settlement was arrived at the intervention of a Judicial Officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the first respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavits which were got signed by her by misrepresentation of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of respondent No. 1 herein.

Ex facie the settlement between the parties appears to be genuine. If the contention of the first respondent herein is to be accepted, she would not have accepted the sum of Rs. 2,25,000 and in any event, she could have filed an appropriate application in that behalf before the Court of S.N. Gupta, Additional Sessions Judge, Delhi. What was least expected of her was that she would return the said sum of Rs. 2,25,000 to the appellants herein.

Section 406 is a compoundable offence with the permission of the Court. It is true that Section 498A, IPC is not compoundable.

This Court in Ruchi Agarwal v. Amit Kumar Agrawal in almost a similar situation has quashed a criminal proceeding against the husband, stating: (SCC pp. 301-02, Paras 8-9)

8. ...Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned Counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from

which this appeal arises was filed by the wife only to harass the respondents.

In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the Court if the criminal proceedings from which this appeal arises is allowed to continue.

In view of the conduct of the first respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the appellants, in our opinion, in this case also, would be an abuse of the process of the Court. Respondent No. 1, however, would be entitled to withdraw the sum of Rs. 50,000 which has been deposited in the Court. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution direct that the impugned judgment be set aside. The First Information Report lodged against the appellants is quashed. The appeal is allowed. However, this order should not be treated as a precedent.

It would not be out of place to observe that the initial judgment of the Supreme Court passed in the case of B.S. Joshi (supra), was pressed into service in a different context before the Supreme Court in the case Nikhil Merchant Vs. Central Bureau of Investigation and Another, , where the scope of detrimentation of criminal liability in Commercial Transactions was analyzed, in relation to the fact of compromise of a dispute in criminal matters, while taking assistance of the case of B.S. Joshi (supra), for impressing upon the Court, to allow the compounding of the offence, on the strength of the compromise and the Supreme Court has analysed this aspect in Paragraphs 30 and 31 of its judgment by finding that the criminal proceedings could be quashed in the event of compromise. The relevant Paragraphs 30 and 31 are quoted herein below:

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised ?

On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

We, therefore, set aside the order passed by the High Court dismissing the

petitioner's Revision Application No. 49 of 2003 in Special Case No. 80 of 1998 and quash the proceedings against the appellant. The appeal is accordingly allowed.

It would be further needful to mention that based upon the judgment of the Supreme Court in case of B.S. Joshi (supra), the two Single Judges of M.P. High Court have also permitted compounding of the offence, as also the quashment of the criminal proceedings, in the event of compromise between the husband and wife. The first judgment reported as Hemraj Vs. State of M.P., , was a case where the offence under Sections 323 and 498 of IPC was found to be committed by the husband, for which he was convicted and the Criminal Revision was pending before the High Court, where the matter was compromised and this Court, while exercising the inherent powers u/s 482, Cr.PC had quashed the proceedings in Revision Petition. Similar was the case, where another Single Judge of this Court in the case of Ankush Golecha and Others Vs. State of M.P. and Another, , had quashed the proceedings of compromise executed between the husband and the wife.

In the present case also not only the husband and wife, but the father and mother of the petitioner Bhavuk Sharma (husband) have entered into a compromise and respondent Smt. Anju Sharma (wife) had subscribed to the terms of the compromise in her affidavit, therefore, this Court feels satisfied that no useful purpose would be served if the criminal proceedings continue in this background against the present petitioners u/s 498A of IPC and Section 4 of the Dowry Prohibition Act, before the Criminal Court in the event of settlement of matrimonial dispute.

The identity of the husband and wife, as also the other petitioners have been properly certified by their respective Counsels appearing before this Court and terms of the affidavit have also been verified by the husband and wife, while remaining present before this Court and stating about the contents of the affidavit.

Therefore, in view of the judgment of the Supreme Court as also in view of the compromise entered into between both the parties, this Court has no hesitation in compounding the offence registered against the present petitioners at Police Station, Mahila Thana, Padav in Crime No. 15/07 u/s 498A and Section 4 of the Dowry Prohibition Act as also the Criminal Case No. 6907/07, pending before the Judicial Magistrate First Class, Gwalior while exercising power u/s 482 of Cr.PC for quashing the criminal proceedings pending against the petitioners.

Therefore, this petition is allowed and the proceedings pending against the petitioners before the Criminal Court in Case No. 6907/2007 are quashed.