

(2019) 03 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 56 Of 2019 IA No. 01 Of 2019

Binderpal Singh And Another

APPELLANT

Vs

State Of Jammu & Kashmir And Another

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 323, 354, 382, 498A

Citation : (2019) 03 J&K CK 0038

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Anjeet Kour, Amit Gupta, Rani Kiyala

Final Decision : Disposed Off

Judgement

1. The petitioners have challenged the registration of FIR filed on the behest of one Pardeep Kour, respondent No. 2 herein, registered at Police Station, Gandhi Nagar, Jammu on 08.08.2015, which subsequently resulted in submission of challan before the learned trial court, 3rd Additional Munsiff, JMFC, Jammu. The petitioners herein have been charged for commission of offences under Sections 323/354 RPC. The commission of offence under Sections 382 RPC could not be proved during the course of investigation against them.

2. The allegations against the present petitioners as stated in the FIR dated 08.08.2015 are as under:

"2. That today at 6:15 pm, the applicant was busy with her house hold activities as there was construction going on in the other part of the house. Suddenly she heard some loud noise in the street and she came out to see what was going on as she heard loud noise of screaming of some people she noticed that four people namely Shukh and Sonu along with two other unknown person who came on motor cycle were beating the labourers mercilessly with blows and wicks. They were thrashing the labourers.

3. That the applicant who was all along with her daughters and tried to enquire the matter and pacify them but both Sonu and such attached the applicant and her young daughters by kicking them and were beaten mercilessly on full public view. Their clothes were turned and were abused publicity.

4. That the life of the applicant and her daughters was saved by the neighbours as the attackers were openly threatening the applicant and her daughters. They stop the construction falling which they will kill them as the younger daughter of the applicant Navdeep who is pregnant was thrashed by the attackers they snatched the gold chain weighing sick of the applicant.

5. That the life of the applicant and her daughter was saved by the neighbours as the attackers were sent upon killing the applicant, her daughter and labourers. It is therefore requested that FIR be registered against such and Sonu S/o Jageer Singh R/o H.No. 658 Digiana Pulli and the two unknown person accomplices for making murderous attempts on the applicant her daughter and the labourers so that criminal be put behind the bars. It is pertinent to mention that the above mentioned attackers and attacked the family of the applicant in 2010 in similar way."

3. Grounds taken in the petition for quashment of the aforesaid criminal case and FIR No. 195/2015 are as under:-

"1. That the petitioners and respondent No. 2 have amicably settled the matter vide memorandum of settlement deed dated 21st April, 2018 whereby the respondent has agreed to the quashing of criminal proceedings before the learned court of 3rd Munsiff, Jammu under the title State vs. Binderpal Singh & Ors. in pursuance of FIR No. 195/2015 and also for the quashing of aforesaid FIR.

2. That the present litigation is mere a burden on the court and wastage of precious time of this Court by continuing the prosecution when both the parties have amicably settled their dispute, continuance of criminal prosecution would be an exercise in futility, as the chance of ultimately conviction are bleak, and justice in this case demands that dispute between the parties to put to an end and peace is restored, quashing of FIR and criminal proceeding do prevent continuance of unnecessarily judicial process.

3. That according to fresh Supreme Court Guidelines offences arising out of matrimony, particularly relating to dowry etc or family disputes and certain offences which are the outcome of civil disputes where victim and offender have settled all disputes between them amicably are liable to be quashed irrespective of the fact that such offences have not been made compoundable and court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improved their future relationship.

4. That now the relation between parties are very cordial as they were close relatives of respondent No. 2 and this matter was just the outcome of civil litigation now they resolved their disputes amicably by withdrawing all cases

against each other and after the filing of above mentioned FIR and in continuation of proceedings, marriage of petitioner No. 2 was solemnized wherein respondent No. 2 attends the all ceremonies of marriage and participated as a family members in all functions of the marriage.

5. That it has been settled between the parties that criminal proceedings against the petitioners stands withdraw as it was just accident and that no one was responsible for the same.

6. That it has been settled between the parties that criminal proceedings and FIR against petitioners stands withdraw as it was just accident and that no one was responsible for the same."

4. Heard rival contentions of learned counsel for the parties and perused the material on record.

5. Having regard to the controversy projected in terms of the present petition, vide order dated 26.02.2019, learned Registrar Judicial of this Court was directed to record the statements of the complainant-Pardeep Kour and the petitioners herein in terms of the aforesaid order same have been recorded. The complainant, namely, Pardeep Kour in her statement has stated that she has compounded the matter with the accused-petitioners herein amicably and as such should have no objections in case of impugned FIR referred to above along with the consequent proceedings pending trial before the court of learned 3rd Additional, Munsiff, Jammu in case titled State vs. Bindarpal Singh and ors., are quashed. The petitioners in their statements have also deposed in the same tune.

6. The offence under Section 354 RPC alleged to have been committed by the petitioners herein is admittedly a non-compoundable offence and so the contention raised that the learned trial court could not permit the composition of the same is well founded. It needs mention herein that in the statement of respondent No. 2 herein, recorded by the learned trial court on 19.03.2018, as a prosecution witness respondent No. 2 has stated that she has compounded the matter with the petitioners herein. She has been declared hostile at the instance of the prosecution, but nothing substantial has been elicited in the cross-examination.

7. Considering the instant petition in light of the facts as pleaded and the law laid down by the Hon'ble Apex Court in case reported in 2013(2) R.A. J. 429, Jitendera Raghuvanshi and ors. v Babita Raghuvanshi and anr. where commission of the offence under section 498-A RPC had been permitted to be compounded, the parties can be allowed to proceed in terms of any settlement/compromise and the prosecution, if any, pending, nonetheless, the factum of non-compoundable nature of offences and should not come in the way of settlement. However, the only caveat in this regard is about bona fide of the parties and same being in general public interest. Therefore, I am of the opinion that the settlement herein is required to be encouraged while also taking note of the fact that there is nothing available to infer that the same is not genuine. In Jitendera

Raghuvanshi's case (supra) the parties were litigating matrimonial disputes and so the Hon'ble Apex Court permitted the compromise to be entertained and contest brought to an end. In exceptional cases High Court may exercise powers, if the prosecution is likely to end in fiasco.

8. Having regard to the same, I am of the opinion that the present petition can be allowed and the inherent power invoked for quashment of proceedings pending before the learned 3rd Additional Munsiff, JMIC, Jammu in case titled, titled State vs. Binderal Singh and ors., and proceedings in FIR No. 195/2015 dated 08.08.2015 registered at Police Station Gandhi Nagar, Jammu for commission of offences under Sections 323 and 354 RPC are, accordingly, quashed. Ordered accordingly.

9. Petition alongwith connected IA is accordingly disposed of in the above said terms.

10. A copy of this order be sent to the concerned court and the Police Station, Gandhi Nagar, Jammu for information.