

(2011) 05 GUJ CK 0024
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 12261 of 2010

Dilip Kumar Husmukhlal Mistri and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 406, 498

Citation : (2011) 2 DMC 707

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : J.R. Shah and Mr. Hardik A. Dave, for the Appellant; L.R. Pujari, APP. for Respondent No. 1 and Mr. Y.M. Thakkar, Advocate., for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Heard learned Advocate, Mr. Hardik A. Dave for the petitioners, learned APP, Mr. L.R. Pujari for the respondent No. 1 and learned Advocate, Mr. Y.M. Thakkar for the respondent No. 2.

2. Rule. Learned APP, Mr. L.R. Pujari for the respondent No. 1 and learned Advocate, Mr. Y.M. Thakkar for the respondent No. 2 waive service of notice of rule.

3. The learned Advocates for the respective parties have jointly submitted that the matter is settled between the parties and copy of the terms of settlement produced by the learned Advocate for the petitioners is ordered to be taken on record. It is further submitted that both the husband and the wife have decided to take divorce and for which, they will approach the competent Court for obtaining consent decree. It is also submitted that an amount of Rs. 25,00,000 (Rupees twenty-five lakh only) is paid by the husband towards the permanent alimony of the wife. In view of the above, it is submitted that the complaint may be quashed.

4. It is clear that the parties have settled the matter by arriving at a compromise and a consent terms settlement is also placed on record. Reliance is placed on a decision of the Apex Court reported in Mohd. Shamim and Others Vs. Smt. Nahid Begum and Another, wherein, it has been held by the Apex Court in paragraph Nos. 12, 13, 14 and 15 as under:

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 affidavit 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 the Respondent No. 1 herein.

13. 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 Rupees 2,25,000 to the Appellants herein.

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

15. This Court in Ruchi Agarwal v. Amit Kumar Agrawal and Others, 2004 (8) Supreme 525, in almost a similar situation has quashed a criminal proceeding against the husband, stating

... 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.

8. In view of the above said 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.

16. 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. The Appellant 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 of India 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.

5. Reliance is also placed on another decision of the Apex Court reported in B.S. Joshi and Others Vs. State of Haryana and Another, wherein complaint for the offence u/s 498-A has been quashed by observing that High Court can exercise inherent power for quashing of criminal proceedings u/s 482 of Cr.P.C. It has been held by the Apex Court in paras 14 and 15 of the said judgment as under:

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the 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 counter productive 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 XXA of Indian Penal Code.

15. 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.

6. Applying the above ratio to the facts of the present case, since the matter has been settled between the parties, I am of the opinion that no useful purpose would be served by permitting the criminal proceedings pending against the petitioners to continue as it would be abuse of process of the Court. Hence, the complaint in question is required to be quashed.

7. In view of the above, FIR registered as C.R. No. 11-160 of 2010 at Godhra Town "A" Division Police Station, is quashed. This Cri. Misc. Application is accordingly allowed. Rule is made absolute. Direct service is permitted.