

(2015) 05 PAT CK 0056

In the Patna High Court

Case No : Criminal Miscellaneous No. 20201 of 2015

Habeeb Asghar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 34, 341, 406, 498A

Citation : (2015) CriLJ 3183 : (2016) 1 PLJR 528

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Ashhar Mustafa, for the Appellant; Manoj Kumar No. 1, APP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Singh, J.—The present application under section 482 of the Code of Criminal Procedure (for short "the Code") has been filed for quashing the First Information Report (for short "the FIR") of Runnisaipur P.S. Case No. 474 of 2014 registered under sections 341, 323, 498-A read with 34 of the Indian Penal Code as well as 3 and 4 of the Dowry Prohibition Act.

2. The prosecution case is based on self-statement of opposite party No. 2 Shaista Yasmeen, which was recorded by a Sub Inspector of Town Police Station, Muzaffarpur on 17.10.2014 pursuant to which the aforesaid police case was registered. The informant has alleged in her self-statement that she was married to petitioner No. 1 Habeeb Asghar on 06.06.2013 as per Muslim rites and rituals and soon thereafter, the accused persons started torturing her in various ways. She was even assaulted by her husband and in-laws. Merely after 3-4 months of marriage, the accused persons started demanding a car. The informant complained that her parents had to sell a piece of land to perform lavish marriage incurring expenses of Rs. 5 lakhs, yet the accused persons continued to

demand for dowry.

3. Mr. Ashhar Mustafa, learned counsel for the petitioner, has submitted that no occurrence, as alleged, ever took place. Little matrimonial skirmishes resulted into the confusion and institution of a criminal case in which not only the husband of the informant but the in-laws have also been arrayed as accused. He has submitted that the parties have pondered over their defaults and have terminated their disputes amicably by mutual agreement instead of fighting it up in a court of law.

4. He has contended that good senses have prevailed between the parties and opposite party No. 2 is happily residing at her matrimonial home and, as such, a compromise petition to this effect has also been filed in the court below, which has been brought on record and marked as Annexure-1 to this petition. He also contended that in view of the bona fide settlement arrived at between the parties, neither the informant nor the accused persons have any inclination to fight the dispute.

5. Mr. Binod Kumar Sinha, learned counsel for the opposite party No. 2 has supported the contention advanced by the learned counsel for the petitioner. He has submitted that since there is a bona fide and genuine settlement of matrimonial dispute and opposite party No. 2 is happily residing at her matrimonial home and is leading a happy conjugal life, the ends of justice requires that the impugned FIR be quashed.

6. However, Mr. Manoj Kumar No. 1, learned Additional Public Prosecutor for the State has contested the matter. He has submitted that the offences under sections 498A of the Indian Penal Code (for short "IPC") and 4 of the Dowry Prohibition Act are non-compoundable and the inherent powers under section 482 of the Code cannot be invoked to by-pass the mandatory provision of section 320 of the Code. He has further submitted that the offences alleged are serious in nature and the matter is being investigated by the police. According to him, at the stage of investigation the defence of an accused cannot be a ground for quashing the FIR. The veracity of the allegations made in the FIR can be tested by the investigating agency in course of investigation and if the Investigating Officer submits charge sheet before the Magistrate, the guilt or innocence of the accused has to be tested in course of trial.

7. Learned counsel for the petitioners, in reply, submitted that merely because an offence is non-compoundable under section 320 of the Code would not mean that this Court is denuded of its power to quash the FIR in exercising its jurisdiction under section 482 of the Code.

8. I have heard the respective counsel for the parties and perused the record.

9. The facts of the case are not in dispute. Petitioner No. 1 is the husband of the opposite party No. 2 whereas petitioner Nos. 2, 3 and 4 are her mother-in-law, brother-in-law and sister-in-law respectively.

10. The informant (Opposite Party No. 2) has filed an affidavit before the court of learned Chief Judicial Magistrate, Sitamarhi seeking permission to compromise the case. A joint affidavit on behalf of both the parties has also been filed before this Court stating therein that both the parties had the occasion to ponder over their defaults and terminate their disputes amicably by mutual agreement and a bona fide settlement has been arrived at between the parties. They are not inclined to fight out the dispute in the court of law.

11. Learned counsel for the opposite party No. 2 has also accepted the fact that the informant is happily residing at her matrimonial home and she is leading a healthy conjugal life and there is no further complication in her matrimonial life.

12. Recognizing the rising trend of matrimonial dispute, the Supreme Court, though in a slightly different context, in G.V. Rao Vs. L.H.V. Prasad and Others, AIR 2000 SC 2474 : (2000) 2 JT 627 : (2000) 2 SCALE 234 : (2000) 3 SCC 693 : (2000) AIRSCW 2600 : (2000) 2 Supreme 165 , in paragraph 12, observed as under:

"12. There has been an outburst of matrimonial disputes in recent times. The 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 counseled 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".

13. The view taken by the Court in G.V. Rao (Supra) was that the court would not encourage the matrimonial dispute.

14. In Preeti Gupta and Another Vs. State of Jharkhand and Another, AIR 2010 SC 3363 : (2010) CriLJ 4303 : (2010) 4 Crimes 19 : (2010) 2 DMC 387 : (2010) 8 JT 410 : (2010) 7 SCC 667 : (2010) 9 SCR 1168 : (2010) 8 UJ 3936 : (2010) AIRSCW 4975 : (2010) 6 Supreme 312 , the Supreme Court took note of the fact that the complaints under section 498-A of the IPC are being filed in the heat of the moment over trivial issues without proper deliberations. The Court was of the view that every complaint under section 498-A of the IPC should be considered as a basic human problem and an endeavour should be made to help the parties in arriving at an amicable resolution of that human problem. In paragraphs 30, 32, 33 and 34, the Court held as under:--

"30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates

discontent and unrest in the family life of a large number of people of the society.

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32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations."

15. An identical issue had arisen before the Supreme Court in B.S. Joshi and Others Vs. State of Haryana and Another, AIR 2003 SC 1386 : (2003) CriLJ 2028 : (2003) 3 CTC 54 : (2003) 1 DMC 524 : (2003) 3 JT 277 : (2003) 3 SCALE 214 : (2003) 4 SCC 675 : (2003) 2 SCR 1104 : (2003) 2 UJ 953 : (2003) AIRSCW 1824 : (2003) 3 Supreme 227 . In that case, the informant had registered a case under sections 498-A, 323 and 406 of the IPC at Central Faridabad Police Station against her husband, father-in-law, mother-in-law and brother-in-law. Subsequently, the informant filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. Her disputes with the accused persons had been finally settled and she and her husband had agreed for mutual divorce. The accused persons of the case had filed an application before the High Court seeking quashing of the FIR. The High Court had declined to quash the FIR as the offences alleged under section 498-A and 406 of the IPC were non-compoundable. Being aggrieved by the judgment of the High Court, the accused persons preferred an appeal before the Supreme Court. After hearing the parties, the Supreme Court held that the inherent power of the High Court under section 482 of the Code are wide and unfettered. It upheld the powers of the High Court under section 482 of the Code

to quash the criminal proceedings where the dispute is of private nature and the compromise is entered into between the parties, who are willing to settle their differences amicably. The Court further held that the High Court ought to have quashed the criminal proceedings by accepting the agreement arrived at between the parties.

16. In *Gian Singh Vs. State of Punjab and Another*, (2011) 1 RCR(Criminal) 900 : (2010) 12 SCALE 461 , a two-Judge Bench of the Supreme Court doubted the correctness of the decisions of the Supreme Court in *B.S. Joshi (Supra)*, *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, AIR 2009 SC 428 : (2008) CLT 1226 : (2008) 9 JT 192 : (2008) 11 SCALE 379 : (2008) 9 SCC 677 and *Manoj Sharma Vs. State and Others*, (2008) 11 JT 674 and referred the matter to a larger Bench. The question before the larger Bench was with regard to the inherent power of the High Court under section 482 of the Code in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime in which he is allegedly involved is not compoundable under section 320 of the Code. The question referred to was lucidly explained by a three-Judge Bench in *Gian Singh Vs. State of Punjab and Another*, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 . The Court explained the difference between 320 and 482 of the Code in the following manner in paragraphs 57 and 59:--

"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

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59. *B.S. Joshi and Others Vs. State of Haryana and Another*, AIR 2003 SC 1386 : (2003) CriLJ 2028 : (2003) 3 CTC 54 : (2003) 1 DMC 524 : (2003) 3 JT 277 : (2003) 3 SCALE 214 : (2003) 4 SCC 675 : (2003) 2 SCR 1104 : (2003) 2 UJ 953 : (2003) AIRSCW 1824 : (2003) 3 Supreme 227 , *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, AIR 2009 SC 428 : (2008) CLT 1226 : (2008) 9 JT 192 : (2008) 11 SCALE 379 : (2008) 9 SCC 677 , *Manoj Sharma Vs. State and Others*, (2008) 11 JT 674 and *Shiji @ Pappu and Others Vs. Radhika and Another*, AIR 2012 SC 499 : (2012) CriLJ 840 : (2012) 1 JCC 101 : (2011) 13 JT 180 : (2012) 167 PLR 108 : (2012) 1 RCR(Criminal) 9 : (2011) 12 SCALE 588 : (2012) AIRSCW 445 do illustrate the principle that High

Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment."

17. Apart from explaining the differences between the two provisions in the manner aforesaid, the Court also described the extent of power under section 482 of the Code in quashing the criminal proceedings in the cases where the parties had settled the matter although the offences are not compoundable in the following manner in paragraph 58:--

"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

18. Thereafter, the Court answered the reference made to it in paragraphs 61 and 62 in the following words:--

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

62. In view of the above, it cannot be said that B.S. Joshi and Others Vs. State of Haryana and Another, AIR 2003 SC 1386 : (2003) CriLJ 2028 : (2003) 3 CTC 54 : (2003) 1 DMC 524 : (2003) 3 JT 277 : (2003) 3 SCALE 214 : (2003) 4 SCC 675 : (2003) 2 SCR 1104 : (2003) 2 UJ 953 : (2003) AIRSCW 1824 : (2003) 3 Supreme 227 , Nikhil Merchant Vs. Central Bureau of Investigation and Another,

AIR 2009 SC 428 : (2008) CLT 1226 : (2008) 9 JT 192 : (2008) 11 SCALE 379 : (2008) 9 SCC 677 and Manoj Sharma Vs. State and Others, (2008) 11 JT 674 were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench(es) concerned."

19. The Court was categorical that in respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statute, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity cannot be quashed merely on the ground of settlement between the parties but the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted. The Court has held that under such circumstances by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

20. Recently, the ambit and scope of the inherent powers of the High Court under section 482 of the Code in quashing of the criminal proceedings in non-compoundable offences relating to matrimonial disputes was discussed and adjudicated by a three-Judge Bench in Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another, (2013) 4 AD 59 : (2013) 116 CLT 572 : (2013) 2 Crimes 90 : (2013) 2 JCC 1365 : (2013) 4 JT 98 : (2013) 2 RCR(Criminal) 427 : (2013) 3 SCALE 537 : (2013) 4 SCC 58 : (2013) AIRSCW 2349 : (2013) 2 Supreme 417 . In that case, marriage of Jitendra Raghuvanshi and Babita Raghuvanshi was solemnized on 22.02.2002 as per Hindu rites and rituals. After the marriage, parties were residing together as husband and wife. On 05.03.2003, an F.I.R. was registered for the offences punishable under sections 498-A and 406 read with 34 of the IPC at the instance of Babita Raghuvanshi owing to the harassment and torture meted out to her in the matrimonial home by her husband and his relatives. Another criminal case was also registered against Jitendra Raghuvanshi in 2011 for the offences punishable under sections 498-A and 406 of the IPC and sections 3 and 4 of the Dowry Prohibition Act, 1961. In the year 2012, with the help and intervention of the family members, friends and well-wishers, the parties amicably settled their differences by way of mutual settlement. A compromise application was filed for dropping of the criminal proceedings in both the criminal cases instituted at the behest of Babita Raghuvanshi. The informant/complainant Babita Raghuvanshi also filed an affidavit stating that she did not wish to pursue the criminal proceedings against the accused persons. However, the trial court rejected the said application. Being aggrieved, Jitendra Raghuvanshi filed an application before the High Court invoking its inherent powers under section 482 of the Code to quash the criminal proceedings launched against them. The High Court dismissed the application

filed by the accused persons stating that the Court has no power to quash the criminal proceedings in respect of the offences under sections 498-A and 406 of the IPC since both were non-compoundable offences. Aggrieved by the order passed by the High Court, Jitendra Raghuvanshi had filed an appeal before the Supreme Court.

21. The Supreme Court examined the scope and ambit of powers of the High Court under section 482 of the Code in quashing of the criminal proceeding in non-compoundable offences relating to matrimonial disputes and held in paragraphs 15, 16 and 17 as under:

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16) There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

17) In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.C.R.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore."

22. After considering the law laid down by the Supreme Court in B.S. Joshi (Supra), Gian Singh (Supra) and Jitendra Raghuvanshi (Supra), it becomes amply clear that even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, section 320 of the Code would not be a bar to the exercise of powers of quashing of the First Information Report, complaint or the subsequent criminal proceedings.

23. Reverting back to the facts and circumstances of the present case, it would be evident that the entire controversy had arisen due to domestic and matrimonial discord and differences and since the matter has amicably been settled and the informant is not willing to pursue the matter as she is happily residing in her matrimonial home, no useful purpose would be served by continuing with the investigation.

24. Consequently, and keeping in mind the decisions of the Supreme Court rendered in the cases discussed hereinabove, I am of the view that allowing the investigation to continue may lead to insurmountable harassment, agony and pain not only to the accused but also to the informant and even other common relatives. It may even spoil the matrimonial life of the couple which could be saved due to intervention of friends and well wishers.

25. Accordingly, the FIR of Runnisaipur P.S. Case No. 474 of 2014 dated 17.10.2014 registered for the offences punishable under sections 341, 323, 498-A read with 34 of the IPC and under sections 3 and 4 of the Dowry Prohibition Act and all the proceedings emanating therefrom are hereby quashed.

26. The application stands allowed.