

(2015) 03 MAD CK 0527

In the Madras High Court

Case No : Criminal R.C. No. 953 of 2014, M.P. No. 1 of 2014 and CrI. O.P. No. 11425 of 2014

Issac Ponraj and Others

APPELLANT

Vs

P. Stella Jesumathy and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 320, 397, 401, 401(1), 407(2)
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13(1)(b)
Penal Code, 1860 (IPC) — Section 312, 406, 498A, 498-A

Citation : (2015) 03 MAD CK 0527

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : V. Neethidurai, for the Appellant; C.S. Saravanan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Manikumar, J.—Mrs. Stella P. Jesumathy and Mr. Issac Ponraj, spouses, have appeared before the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras and arrived at an agreement, dated 17.04.2014. Mr. Issac Ponraj, has agreed to pay a sum of Rs. 3,00,000/- towards permanent alimony, towards past, present and future maintenance to Mrs. Stella P. Jesumathy. The said amount of Rs. 3,00,000/- has to be paid in three instalments, viz.,

"(i) Rs. 1,00,000/- (Rupees one lakh only) at the time of filing the Divorce Petition by mutual consent;

(ii) Rs. 1,00,000/- (Rupees one lakh only) after all criminal proceedings filed by both of them are quashed and withdrawn by both the parties; and

(iii) Rs. 1,00,000/- (Rupees one lakh only) at the time of giving the evidence at the time of granting divorce in mutual consent petitions."

2. Mediation Agreement, dated 17.04.2014, further indicates that the wife has agreed to withdraw M.P. No. 4954 of 2013 in M.C. No. 1 of 2012 and also the connected petitions, which are pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai and she has also agreed to co-operate with the husband, for quashing the Cyber Crime F.I.R. No. 322 of 2011, pending before the Central Crime Branch, Egmore, Chennai and 498-A Charge Sheet in C.C. No. 1801 of 2010, pending before the Chief Metropolitan Magistrate Court, Egmore, Chennai, in which, she is the defacto complainant.

3. It is also agreed in the Mediation Agreement, dated 17.04.2014 that the husband has agreed to withdraw the complaint, dated 17.04.2013, filed by him, against the wife, before the All Women Police Station, Adyar, Chennai and also to co-operate for quashing the FIR in Cr. No. 699 of 2013, pending on the file of the Erode Town Police Station.

4. On 05.03.2015, when the matter came up for hearing, Mr. C. Saravanan, learned counsel appearing for the wife submitted that maintenance ordered for Rs. 10,000/- per month in M.C. No. 1 of 2012, dated 17.12.2012, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, confirmed by this Court in Crl.R.C. No. 134 of 2013 and thereafter, affirmed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) Nos. 8284 and 8285 of 2013, dated 25.10.2013, has not been paid and therefore, the wife was constrained to file Crl.M.P. No. 4954 of 2013, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, for attachment of the salary of the husband and after considering the rival submissions, vide order, dated 21.08.2014, the learned Magistrate has ordered notice of attachment to the garnishee to attach the salary of husband.

5. Being aggrieved by the same, husband has filed Crl.R.C. No. 953 of 2014 and this Court, vide order, dated 27.10.2014, has granted interim stay of order of attachment and thereafter, a sum of Rs. 3,10,000/- has been received by the wife. The said sum of Rs. 3,10,000/- is stated to have been arrived at, as full and final settlement of the various disputes between the spouses and both Mr. Shanmugaraj, learned counsel for the husband, as well as Mr. C.S. Saravanan, learned counsel for the respondent, have submitted that parties, have mutually agreed to withdraw the criminal complaints/proceedings, initiated against each other, and pending in different forums.

6. Mr. C.S. Saravanan, learned counsel appearing for the wife submitted that father-in-law of the wife has filed a Criminal complaint in Cr. No. 699 of 2013, on the file of Erode Town Police Station, against the wife and others, under Section 312 IPC r/w 5 of Termination of Pregnancy Act, 1971 and that the said F.I.R., is stated to be pending on the file of the Erode Town Police Station. He further submitted that no final report has been filed in the said Criminal complaint and that wife has filed Crl. O.P. No. 11425 of 2014, to quash the said FIR, in which, he has not engaged any counsel.

7. On 05.03.2015, it was the further submission of the learned counsel for the wife that wife has preferred a complaint against the husband and others, under Section 498-A IPC., r/w Section 3 and 4 of Dowry Prohibition Act and on investigation, a charge sheet has been filed by the learned Chief Metropolitan Magistrate, Egmore, Chennai and it is stated to be pending in C.C. No. 1801 of 2010. On the abovesaid date, it was the further submission of the learned counsel for the wife that both M.C. No. 1 of 2012 and C.C. No. 1801 of 2010 are directed to be posted on 23.03.2015 before the learned Chief Metropolitan Magistrate, Egmore, Chennai and that an endorsement has also been made in M.C. No. 1 of 2012 to the effect that Rs. 3,10,000/- has been received by the wife and that she would withdraw M.C. No. 1 of 2012.

8. Submission has also been made by the learned counsel for the wife, to the effect that though wife is willing to terminate all proceedings viz., M.C. No. 1 of 2012 and C.C. No. 1801 of 2010, pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, husband's father is not coming forward to withdraw the FIR in Cr. No. 699 of 2010, registered under Section 312, IPC r/w 5 of Termination of Pregnancy Act, 1971, on the file of the Erode Town Police Station or in the alternative, coming forward to make any endorsement in the quash petition CrI. O.P. No. 11425 of 2014 filed by the wife. It was also the submission of the learned counsel for the wife that though wife had appeared on several occasions before the Court below, husband has not turned up.

9. A further representation has been made to the effect that both the parties have filed HMOP. No. 3990 of 2014 on the file of the learned Principal Family Judge, Chennai, under Section 13(1)(b) of the Hindu Marriage Act, 1955, for divorce and that there is mutual consent by divorce, by the parties. HMOP. No. 3990 of 2014 is stated to have been posted on 17.04.2015. According to him, though the wife has agreed to withdraw all the proceedings, husband is protracting the proceedings, contrary to Mediation Agreement, dated 17.04.2014.

10. Thus, to give quietus to the disputes, this Court, exercising the extraordinary jurisdiction of the High Court, under Section 227 of the Constitution of India, which confers powers of superintendence over all Courts by the High Court and in exercise of Sections 401(1) and 407(2) Cr.P.C., directed the learned Chief Metropolitan Magistrate, Egmore, Chennai, to transfer M.C. No. 1 of 2012 and C.C. No. 1801 of 2010 alongwith entire case papers to this Court, on or before 12.03.2015. As the quash petition was pending in different forum, Registry was directed to post all cases together.

11. Records in M.C. No. 1 of 2012 and C.C. No. 1801 of 2010, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, have been perused. Though Mr. C.S. Saravanan, learned counsel for the wife, submitted that endorsements have been made in the abovesaid proceedings, to withdraw the same, perusal of the record does not indicate any such endorsement. However, he submitted that wife would file a petition, duly signed by him, for withdrawal of M.C. No. 1 of 2012

and C.C. No. 1801 of 2010, which can be taken note of this Court for termination of the said proceedings.

12. As similar endorsements/petitions are also not available in C.C. No. 1801 of 2010, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, Mr. C.S. Saravanan, learned counsel for the wife submitted that the complainant would file a petition to terminate the proceedings, in exercise of the powers, under Section 482 of the Code of Criminal Procedure, in the light of the decision made 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 and in compliance with the Mediation Agreement, dated 17.04.2014.

13. The said judgment also arose, under Section 498-A IPC., r/w Section 3 and 4 of Dowry Prohibition Act. Parties therein have agreed to settle the matrimonial disputes. The accused did not seek for any compounding of an offence. However, the accused approached the High Court under Section 482 Cr.P.C., to quash the proceedings, which the High Court refused. When the correctness of the said order was tested, the Apex Court held that refusal of the Court, to exercise the powers, under Section 482, on the grounds that the offences are not compoundable in nature, is not correct.

14. The present revision case has been filed by the husband against an order of attachment of salary. Record of proceedings shows that the impugned order has been stayed. However, wife has acknowledged the receipt of Rs. 3,10,000/-, as permanent alimony, towards past, present and future maintenance, to withdraw the criminal proceedings, initiated by her, against the husband and his in-laws, under Section 498-A IPC., in C.C. No. 1801 of 2010, pending before the Chief Metropolitan Magistrate Court, Egmore, Chennai. She has also agreed to withdraw M.C. No. 1 of 2012, pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai. But, in both the above cases, no memorandums/petition have been filed.

15. There are two different things, which the husband has agreed to do in the mediation agreement, dated 17.04.2014, which are as follows:

(1) The petitioner/husband agreed to pay a sum of Rs. 3,00,000/- (Rupees Three Lakhs Only) as follows:

"(i) Rs. 1,00,000/- (Rupees one lakh only) at the time of filing the Divorce Petition by mutual consent;

(ii) Rs. 1,00,000/- (Rupees one lakh only) after all criminal proceedings filed by both of them are quashed and withdrawn by both the parties; and

(iii) Rs. 1,00,000/- (Rupees one lakh only) at the time of giving the evidence at the time of granting divorce in mutual consent petitions."

(2) The petitioner/husband has agreed to withdraw the complaint, dated 17.04.2013, filed by him, against the wife, before the All Women Police Station, Adyar, Chennai and also to co-operate for quashing the FIR in Cr. No. 699 of 2013, pending on the file of the Erode Town Police Station.

16. The Mediation Agreement, dated 17.04.2014, indicates that Cyber Crime F.I.R. No. 322 of 2011, filed by the wife, is pending before the Central Crime Branch, Egmore, Chennai. At this juncture, when the matter came up for hearing, both the learned counsel appearing for the parties submitted that the Police, on investigation, has closed the abovesaid Crime, as mistake of fact.

17. As per the Mediation Agreement, dated 17.04.2014, the second thing to be done by the husband, is to withdraw the complaint, dated 17.04.2013, filed by him, against the wife, before the All Women Police Station, Adyar, Chennai. Mr. C.S. Saravanan, learned counsel appearing for the wife, submitted that the said complaint, dated 17.04.2013, has also been closed, by the All Women Police Station, Adyar, Chennai. However, Mr. Neethidurai, learned counsel for the husband, has no specific instructions.

18. Be that as it may, even if the complaint is not closed, Mr. I. Suyambu, father-in-law and the complainant before the All Women Police Station, Adyar, Chennai, present in the Chambers, agreed that the complaint, dated 17.04.2013, can be closed. He has also made an endorsement to that effect in CrI. O.P. No. 11425 of 2014, filed under Section 482 of the Code, in which, he is a party.

19. Mr. V. Neethidurai, learned counsel for the husband has no objection for the endorsement, being recorded in the present proceedings. It is made clear that both the learned counsel appearing for the husband and his father, Mr. I. Suyambu, who is present in the Chambers, would not raise any technical objections, for withdrawal of the complaint, dated 17.04.2013, in any proceedings, between the parties.

20. As stated supra, FIR in Cr. No. 699 of 2013, pending on the file of the Erode Town Police Station, has been preferred by Mr. I. Suyambu, father-in-law, against the wife, for the alleged offences, under Section 312 IPC r/w 5 of Termination of Pregnancy Act, 1971. At the time of Mediation Agreement, dated 17.04.2014, husband has agreed to cooperate for quashing the FIR in Cr. No. 699 of 2013, pending on the file of the Erode Town Police Station. Steps have been taken by the wife, to quash the said FIR.

21. Though Mr. C.S. Saravanan, learned counsel for the wife submitted that the private respondent/father-in-law, had not entered appearance on 05.03.2015, perusal of the Vakalat filed by Mr. N.S. Sivakumar and Mr. G. Rajaganapathi, shows that Vakalat, on behalf of Mr. I. Suyambu, defacto complainant/2nd respondent in CrI. O.P. No. 11425 of 2014, has already been filed on 30.06.2014. But probably, the matter was not listed thereafter.

22. As Mr. I. Suyambu, defacto complainant in Cr. No. 699 of 2013, on the file of

the Erode Town Police Station, has made an endorsement in CrI. O.P. No. 11425 of 2014, to withdraw the said complaint, recording the same, FIR in Cr. No. 699 of 2013, pending on the file of the Erode Town Police Station, stands closed. In view of the specific endorsement made by Mr. I. Suyambu, defacto complainant, question of quashing the said complaint, does not arise and hence, CrI. O.P. No. 11425 of 2014, stands dismissed.

23. As per the Mediation Agreement, dated 17.04.2014, today, wife has made an endorsement in C.C. No. 1801 of 2010, on the Chief Metropolitan Magistrate Court, Egmore, Chennai, to the effect that the abovesaid proceedings may be terminated. Mr. C.S. Saravanan, learned counsel for the wife, party to the Mediation Agreement, dated 17.04.2014, also endorsed the same.

24. In Jitendra Raghuvanshi's case (cited supra), permission has been sought for to quash the proceedings, pertaining to the matrimonial disputes, on ground of compromise entered into between parties concerned. The High Court refused to entertain the same. On appeal, the Supreme Court held that the criminal proceedings or FIR or complaint can be quashed under Section 482 in appropriate cases, in order to meet ends of justice. Section 320 Cr.P.C., does not limit or affect powers under Section 482 in this regard. It is further held that even in non-compoundable offences, pertaining to matrimonial disputes, if the Court is satisfied that parties have settled the disputes amicably and without any pressure, then, for purpose of securing ends of justice, FIR or complaint or subsequent criminal proceedings in respect of said offences, can be quashed under Section 482. While holding so, the Supreme Court has taken note of a decision in B.S. Joshi and Others Vs. State of Haryana and Another, AIR 2003 SC 1386 : (2003) CrI LJ 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 . It is worthwhile to extract the relevant paragraphs from the said judgment,

"9. ...It is not in dispute that the facts in B.S. Joshi (supra) are identical and the nature of the offence and the question of law involved are almost similar to the one in hand. After considering the law laid down in State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CrI LJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp and explaining the decisions rendered in Madhu Limaye Vs. The State of Maharashtra, AIR 1978 SC 47 : (1978) CrI LJ 165 : (1977) 4 SCC 551 : (1978) SCC(Cri) 10 : (1978) 1 SCR 749 : (1977) 9 UJ 733 , Surendra Nath Mohanty and Anr Vs. State of Orissa, AIR 1999 SC 2181 : (2000) 89 CLT 130 : (1999) CrI LJ 3496 : (1999) 2 CTC 263 : (1999) 3 JT 408 : (1999) 3 SCALE 103 : (1999) 5 SCC 238 : (1999) 2 SCR 1005 : (1999) 2 UJ 831 : (1999) AIRSCW 2199 : (1999) 4 Supreme 421 and Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, AIR 1998 SC 128 : (1998) CrI LJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp , this Court held:

"8. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power."

Considering matrimonial matters, this Court also held:

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

10. As stated earlier, it is not in dispute that after filing of a complaint in respect of the offences punishable under Sections 498A and 406 of IPC, the parties, in the instant case, arrived at a mutual settlement and the complainant also has sworn an affidavit supporting the stand of the appellants. That was the position before the trial Court as well as before the High Court in a petition filed under Section 482 of the Code. A perusal of the impugned order of the High Court shows that because the mutual settlement arrived at between the parties relate to non-compoundable offence, the court proceeded on a wrong premise that it cannot be compounded and dismissed the petition filed under Section 482. A perusal of the petition before the High Court shows that the application filed by the appellants was not for compounding of non-compoundable offences but for the purpose of quashing the criminal proceedings.

11. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In B.S. Joshi (supra), this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

12. 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.

13. 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.

14. 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."

25. As per Section 482 of the Code of Criminal Procedure, nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 397 and 401 Cr.P.C., deals with the powers of the revision.

26. The order passed in Crl. M.P. No. 4954 of 2013 in M.C. No. 1 of 2012, dated 21.08.2014, for attachment, is impugned in Crl.R.C. No. 953 of 2014. Parties have agreed to settle the disputes, as per the Mediation Agreement, dated 17.04.2014, by which, wife has received a sum of Rs. 3,10,000/- towards permanent alimony, towards past, present and future maintenance.

27. Charge Sheet has been filed in C.C. No. 1801 of 2010, on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai. The accused therein have not filed any petition, to quash the criminal case. But the wife has made an endorsement in C.C. No. 1801 of 2010, praying to terminate the proceedings, in the light of the Mediation Agreement, dated 17.04.2014 and also taking note of the fact that Mr. I. Suyambu, defacto complainant in Cr. No. 699 of 2013, on the file of the Erode Town Police Station, has made an endorsement in Crl. O.P. No. 11425 of 2014, to the effect that the complaint in Cr. No. 699 of 2013, is withdrawn and be closed. Wife has also made an endorsement in M.C. No. 1 of 2012, to the effect that the same may be terminated.

28. To give a quietus to the disputes pending between the spouses and also in-laws and having regard to the Mediation Agreement, dated 17.04.2014 and also taking note of the specific endorsements made by the wife in C.C. No. 1801 of 2010, pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai and M.C. No. 1 of 2012 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and the endorsement made by Mr. I. Suyambu, defacto complainant in Cr. No. 699 of 2013, in Crl. O.P. No. 11425 of 2014, this Court, in

exercise of powers, under Sections 397 and 401 Cr.P.C., to secure the ends of justice, between the parties to the proceedings, stated supra and in exercise of the powers, under Section 227 of the Constitution of India, by recording the endorsements made by both the parties and the respective learned counsel, hereby hold that,

(i) FIR in Cr. No. 699 of 2013, on the file of the Erode Town Police Station, shall be closed.

(ii) All further proceedings in M.C. No. 1 of 2012 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, are terminated.

(ii) All further proceedings in C.C. No. 1801 of 2010, on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, are also terminated.

29. Learned counsel appearing for both the parties submitted that no further proceedings shall be initiated in any forum/Court, regarding any dispute, in relation to the subject matter of the disputes in M.C. No. 1 of 2012 and C.C. No. 1801 of 2010, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and Cr. No. 699 of 2013, on the file of the Erode Town Police Station.

30. Both the parties have filed HMOP. No. 3990 of 2014 on the file of the learned Principal Family Judge, Chennai, under Section 13(1)(b) of the Hindu Marriage Act, 1955, for divorce and it was submitted by the learned counsel for the wife that there is mutual consent by the parties. HMOP. No. 3990 of 2014 is stated to have been posted on 17.04.2015. It is sincerely hoped that both the parties would appear on the said date, to give a quietus to the dispute, pending between them and thereafter, would lead a peaceful life, without any further litigation.

31. In view of the endorsement made by Mr. I. Suyambu, defacto complainant in Cr. No. 699 of 2013, on the file of the Erode Town Police Station, in CrI. O.P. No. 11425 of 2014, to withdraw the said complaint, Mr. A.N. Thami Durai, learned Additional Public Prosecutor, shall inform the Inspector of Police, Erode Town Police Station, to quash Cr. No. 699 of 2013, pending on its file.

S. Manikumar, J.

32. With the above directions, both the Criminal Revision Case and Criminal Original Petition are disposed of. Attachment ordered is cancelled. No costs. Consequently, connected Miscellaneous Petition is also closed.