

(2004) 02 BOM CK 0047

In the Bombay High Court

Case No : Criminal Writ Petition No. 1025 of 1999

Jasmine Vipul Bhatia alias Jasmine Jayant Bhatia, Vipul
Narottam Bhatia, Purnima Narottam Bhatia and Narottam
Haridas Bhatia

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 320, 323, 324, 326

Citation : (2004) 2 DMC 162 : (2004) 3 MhLj 262 : (2004) 4 RCR(Criminal) 751

Hon'ble Judges : Ranjana Desai, J

Bench : Single Bench

Advocate : Niranjan Mundangi, holding for A.P. Gupte, for the Appellant; A.S. Gadkari, APP, for the Respondent

Judgement

Ranjana Desai, J.—Petitioner 1 is the original complainant in case No. 285/P/96 (C.R. 322/95) pending before the Metropolitan Magistrates 31st Court, Vikhroli, Mumbai. She was married to petitioner 2 Vipul Narottam Bhatia on 23rd January, 1995. Petitioner 3 Purnima Narottam Bhatia is the sister of petitioner 2 and petitioner 4 Narottam Haridas Bhatia is the father of petitioner 2.

2. Due to difference of opinion petitioner : could not pull on with her husband. They started residing separately from 14th February, 1995. On 6th February, 1995 petitioner 1 had filed a complaint with Pant Nagar Police Station against rest of the petitioners inter alia u/s 498A read with Section 34 of the Indian Penal Code. It was registered as C.R. No. 322/95.

3. Admittedly on 26th November, 1996, the marriage between petitioner 1 and petitioner 2 was dissolved by consent decree of divorce. Thereafter petitioner 1 got re-married and she is now staying abroad.

4. In view of the amicable settlement of disputes, the petitioners have prayed that Criminal Case No. 285/5/96 pending in the Metropolitan Magistrate's 31st

Court, Vikhroli, Mumbai, be quashed. This is a rather unusual petition where the complainant and the accused have approached this court for quashing criminal cases filed at the instance of the complainant. The question is whether this court can quash the pending criminal proceedings which involve non-compoundable offence.

5. Mr. Mundargi, learned counsel appearing for the petitioners has placed heavy reliance on the decision of the Supreme Court in B.S. Joshi and Others Vs. State of Haryana and Another, . He contended that though offence u/s 498A of the Code is not a compoundable offence, this court can in its jurisdiction u/s 482 of the Criminal Procedure Code ("the Code" for short) quash the pending prosecution involving the said offence because under the changed scenario, if prosecution is allowed to continue it would result in abuse of process of Court.

6. I find substance in Mr. Mundargi's contention. In State of Karnataka Vs. L. Muniswamy and Others, the Karnataka High Court had quashed the proceedings initiated against the respondent therein u/s 324, 326, 307 read with 34 of the Indian Penal code on the ground that there was no sufficient ground for prosecuting them. The State challenged the High Court's order in the Supreme Court. The Supreme Court came to a conclusion that the evidence collected by the prosecution was woefully inadequate for connecting the respondents with crime. There was no material on record on which the court could reasonably convict the accused and hence the High Court was justified in quashing the proceedings. The Supreme Court, therefore, held that the High Court was justified in coming to a conclusion that for meeting the ends of justice the proceedings against the accused ought to be quashed. This is how the Supreme Court described the High Court's inherent powers.

"In exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding 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. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provisions which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

It is thus clear that one of the considerations which weighed with the Supreme Court was the fact that there was no possibility of a conviction, if the case had

proceeded. The prosecution therein was a "lame prosecution".

7. B.S. Joshi's case (supra), in the facts before the Supreme Court, a wife had filed a case against her husband and members of his family u/s 498A, 323 and 406 of the Indian Penal Code. The parties thereafter settled the dispute. The marriage was dissolved. A petition then came to be filed in the High Court praying that the F.I.R. filed by the wife be quashed. The High Court refused to quash the F.I.R. on the ground that the offences were non-compoundable. The Supreme Court referred to its judgment in Muniswamy's case (supra) and held that where the parties had amicably settled their matrimonial disputes to secure the ends of justice quashing of F.I.R. becomes necessary. The Supreme Court observed that in such a situation Section 320 of the Code would not be a bar to the exercise of power of quashing. It was observed that power u/s 482 of the Code has to be exercised with utmost care and caution. Its exercise would depend upon the facts and circumstances of each case. The sole purpose of exercise of this power is to prevent abuse of process of the court or otherwise to secure the ends of justices. The Supreme Court observed that in the facts of the case before it, the wife had filed an affidavit that the F.I.R. was registered due to temperamental differences. There may be many reasons for not supporting the imputations. In such reasons for not supporting the imputations. In such eventuality there would almost be no chance of conviction and, therefore, it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. In this view of the matter the Supreme Court quashed the F.I.R.

8. The above judgments of the Supreme Court would be applicable to the present case also. It is true that offences which are not mentioned in Section 320 of the Code cannot be compound. Admittedly the offence u/s 498A of Indian Penal Code involved in the instant complaint cannot be compounded. But the petitioners are not seeking compounding of the said offence. The petitioners want the complaint to be quashed. The Courts of law should allow prosecution of the perpetrators of crime so that they are punished, if found guilty. But the courts cannot be persecutors. Depending on facts and circumstances of each case the court can always exercise its powers u/s 482 of the Code to quash a complaint, where the parties no longer bear any grudge against each other and want to bury their past. Particularly in matrimonial matters where there is an amicable settlement, allowing the prosecution to continue may be counter productive. When the chances of the prosecution ending in conviction are nil allowing such prosecution to continue would amount to abuse of process of court and quashing such proceedings would secure ends of justice. Quashing of such prosecutions would also lighten the burden of the courts, making it possible for them to concentrate on other important cases. But this does not mean that powers u/s 482 of the code can be used in every case where parties come up with a case that there is a settlement. The gravity of the offence, the circumstances under which it was committed, the status of the victim and other attendant circumstances must be weighed by the court. This power has to be

used with great care and circumspection and in exceptional cases. What may apply to matrimonial cases may not apply to other cases. Order quashing a proceeding would not create a precedent and each case will have to be dealt with having regard to its peculiar facts and circumstances.

9. In the present case the parties have settled their disputes. The marriage is dissolved. Petitioner 1 has re-married and she is happily staying abroad. She does not want to prosecute her complaint. The prosecution can, therefore, be described as a lame prosecution. In such circumstances allowing the proceedings to continue would amount to abuse of process of the Court. It would not be in the interest of parties. Ends of justice would be secured, if the prosecution is quashed. Hence Criminal Case No. 285/P/96 pending before the Metropolitan Magistrate's 31st Court, Vikhroli, Mumbai is quashed.

10. Petition is disposed of.