
(2013) 12 GUJ CK 0184
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 14066 of 2008

Kinjalben

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0184

Hon'ble Judges : A.G. Uraizee, J

Bench : Single Bench

Advocate : Rajesh B. Soni, No. 1, for the Appellant; R.N. Ghotra, Ms. Manshi A. Macwan, Ms. Dipaben S. Thakar, Advocates for the Respondent No. 2 and Mr. Neeraj B. Soni, APP for the Respondent(s) No. 1, for the Respondent

Final Decision : Allowed

Judgement

A.G. Uraizee, J.—Heard learned advocate Mr. R.B. Soni for the applicants, Mr. N.B. Soni, learned APP for respondent No. 1 and learned advocate Ms. Manshi A. Macwan appearing for respondent No. 2. The facts giving rise to the present application are that the marriage between Parikshit @ Pareshkumar Jayantilal Soni - brother of the applicant and respondent No. 2 Dipikaben Jitendrabhai was solemnized as per Hindu rites and rituals on 22/1/2005. In the initial four months of marriage, everything was honky dory but thereafter husband of respondent No. 2 started to subject her to physical ill treatment and taunts and meted out physical cruelty for not bringing sufficient dowry. The father-in-law, mother-in-law and sister-in-law were also ill treating respondent No. 2. On 22/4/2007, demand of Rs. 1,00,000/- and other articles viz. T.V., Refrigerator, Scooter etc was made and respondent No. 2 was beaten black and blue by her husband, mother-in-law, father-in-law, sister-in-law and was driven out from matrimonial home. Respondent No. 2 started living in her parental home and lodged complaint being CR-II-437/2008 with City Police Station, Mehsana for the offences punishable u/s 498A and 114 of Indian Penal Code and sections 3 & 7 of the Dowry Prohibition Act against present applicant Parikshit @ Pareshkumar

Jayantilal Soni (husband), Jayantilal Manilal (father-in-law), Kanchanben @ Pallaviben Jayantilal Manilal (mother-in-law). The applicant, who is the sister-in-law of respondent No. 2, has approached this Court u/s 482 of Criminal Procedure Code for quashing the complaint (Annexure "A") lodged by respondent No. 2. This Court while admitting the application on 24/10/2008, by way of interim relief, further investigation of CR-II- 437/2008 qua the present applicant was stayed.

2. Learned advocate Mr. R.B. Soni, at the outset submits that the dispute between the applicants and respondent No. 2 is amicably settled by intervention of family elders and marriage between brother of the applicant and respondent No. 2 is dissolved. He has produced photo copy of the marriage dissolution agreement dated 23/11/2009, which is taken on record. He has also produced photo copy of judgement of Criminal Case No. 5001/2009, whereby other accused persons are acquitted by learned J.M.F.C., Mehsana. He has, therefore, urged that this application may be allowed and complaint may be quashed qua the applicant.

3. Learned advocate Mr. R.B. Soni for the applicant and learned advocate Ms. Mansi A. Macwan appearing for respondent No. 2 original complainant have jointly stated that since the dispute between the parties is amicably settled, this application may be allowed and the complaint (Annexure-"A") may be quashed qua the applicant.

4. The Supreme Court in case of Gian Singh Vs. State of Punjab and Another, has made following observation for quashing of complaint, if matrimonial dispute is settled between the parties:

61. The position that emerges from the above discussion can be summarized 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 u/s 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

5. In yet another a very recent judgement in case of Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another, the Apex Court has reiterated the principles annunciated in case of Gian Singh (supra) and has observed in para 16 as under:

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 their extraordinary jurisdiction. It is trite to state that the power u/s 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 process of 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.

6. Learned APP Mr. Soni has also submitted that since the parties have settled their disputes by dissolving their marriage, no fruitful purpose would be served if criminal complaint lodged by respondent No. 2 is continued and respondent No. 2

is permitted to prosecute her complaint.

7. There is no cavil that the marriage between brother of the applicant and respondent No. 2 is dissolved by agreement dated 23/11/2009. The criminal case No. 5001/2009 against other accused person has resulted into acquittal. Under the circumstances, when the parties have amicably settled their dispute, the possibility of conviction is remote and bleak. The continuation of the criminal case would put the applicants to great oppression and prejudice thereby subjecting them to extreme injustice if the criminal complaint is not quashed.

8. The offshoot of the above discussion and principles laid down by Supreme Court in case of Gian Singh (supra) and Jitendra Raghuvanshi (supra), it would be apposite to accept this application of the applicants and quash the FIR "Annexure A" lodged by respondent No. 2 so that the parties can live in peace henceforth.

9. In the result, the application succeeds and is hereby allowed. The complaint being CR No. 437/2008 (Annexure "A") lodged with City Police Station, Mehsana for the offences punishable u/s 498A and 114 of the Indian Penal Code and section 3 and 7 of the Dowry Prohibition Act against the applicant is hereby quashed qua the applicant. Rule is made absolute.