
(2010) 03 RAJ CK 0007
In the Rajasthan High Court

Kishan Lal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 320, 320(9), 482
Penal Code, 1860 (IPC) — Section 307, 323, 354, 406, 436

Citation : (2010) 3 RLW 2843

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of this criminal misc. petition filed u/s 482 of Cr.P.C., the petitioners have impugned the order dated 22nd December, 2009, whereby the learned Judicial Magistrate, Nokha, District Bikaner verified the compound petition for the offences under Sections 323 and 354 of Indian Penal Code as they are compoundable but denied to verify the same for the offences under Sections 406 and 498A of Indian Penal Code as they are not compoundable u/s 320 of Cr.P.C.

2. Skipping unnecessary details, the necessary facts for deciding the instant petition are, in nub, thus:

That one FIR No. 225/2005 came to be filed at Police Station, Nokha, District Bikaner. After completion of investigation, the police filed police report u/s 173(2) of Cr.P.C. against the accused persons namely Laxmi Narayan, Kishan Lal, Manoj Kumar, Pana Devi and Sarita in the offences under Sections 498A, 406, 323 and 354 of Indian Penal Code on 14th October, 2005 in the court of Judicial Magistrate, Nokha.

Having heard the charge arguments, the accused Manoj Kumar was indicated for the offences u/s 498A, 406, 323 and 354 of Indian Penal Code. The accused persons namely Pana Devi, Sarita and Laxmi Narayan were charged for the

offences under Sections 498A, 406, 323 of Indian Penal Code and the charge of the offences under Sections 498A and 406 was framed against the accused Kishan Lal, who did not plead guilty and claimed to be tried.

During the pendency of trial, both the complainant as also the accused persons entered into a compromise and submitted a compound - petition seeking permission of the Court to compound the offences under Sections 498A, 406, 323 and 354 of Indian Penal Code. Learned Judicial Magistrate, Nokha having considered all the facts on record, found that the value of property involved in the offence u/s 406 of Indian Penal Code was more than 2000/- rupees and thus, the offence u/s 406 of IPC was not compoundable. Similarly, the offence u/s 498-A of Indian Penal Code was also not compoundable u/s 320 of Cr.P.C., 1973. Hence, the learned Judicial Magistrate having granted the permission to compound the offence u/s 354 of Indian Penal Code, verified the compound petition for the offence under Ss. 323 and 354 of Indian Penal Code, but denied to verify the compromise u/s 406 and 498A of Indian Penal Code as they are not compoundable u/s 320 of Cr.P.C.

3. Heard the learned Counsel for the parties and carefully perused the relevant material on record including the relevant provisions of law.

4. Learned Counsel for the petitioners canvassed that albeit the offences under Sections 498A and 406 of Indian Penal Code are not compoundable u/s 320 of Cr.P.C., but the Hon'ble Supreme Court in numerous cases, especially in the case of B.S. Joshi and Others Vs. State of Haryana and Another, has held that to encourage the genuine settlements of matrimonial disputes, Section 320 of Cr.P.C. would not be a bar to the exercise of the power of quashing the First Information Report. The Hon'ble Apex Court also held that any hyper-technical view on the provisions of Section 498A would be counter productive and act against the interests of women and against the object for which the provision was enacted. Learned Counsel further canvassed that our High Court has also quashed the criminal proceedings pending in the courts of Judicial Magistrates for the offences u/s 498A and 406 of Indian Penal, Code while relying on the judgment of B.S. Joshi v. State of Haryana (supra). The learned Counsel has cited the cases of Bhagwan Nath and Ors. v. State of Rajasthan and Anr. reported in 2009(1) Criminal LR (Rajasthan) 458; Babu Lal v. State of Rajasthan reported in 2009(2) Criminal LR (Rajasthan) 1220; and Suresh Chandra v. State of Rajasthan reported in 2003 WLC 692 to Substantiate his submissions.

5. Learned PP did not oppose the submissions made by the learned Counsel for the petitioners and contended that albeit the offences u/s 498A and 406 of Indian Penal Code are not compoundable, but in the light of the judgment of BS Joshi v. State of Haryana (supra), criminal proceedings pending for the offences under Sections 498A and 406 of IPC could be quashed.

6. Having reflected over the submissions made at the bar and carefully scanned the relevant material on record, it is noticed that the offence u/s 406 of Indian

Penal Code is Compoundable with the permission of the Court where the value of the property does not exceed 2000/- rupees and the offence u/s 498-A of Indian Penal Code is neither compoundable without the permission of the Court nor with the permission of the Court. Legislature has not made this offence compoundable u/s 320 of Cr.P.C.

7. The very short question springing for consideration in the instant petition is as to whether the courts should permit to compound the offences which are not compoundable u/s 320 of Cr.P.C. and if the permission to compound such offences cannot be granted, should the High Court in exercise of its inherent powers u/s 482 of Cr.P.C. quash the criminal proceedings pending in the Court of Judicial Magistrate to encourage the genuine settlements of matrimonial disputes?

8. In the case of B.S. Joshi and Others Vs. State of Haryana and Another, the Hon''ble Apex Court held that it was the duty of the courts to encourage the genuine settlements of matrimonial disputes. The Court further held that there was no doubt that the object of introducing chapter XXA 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 harassed or tortured the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper -technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There was every likelihood that the non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier.

9. Relying on this judgment, this Court also quashed the criminal proceedings for the offences under Sections 498A and 406 of Indian Penal Code in many cases, but the question arises as to whether it is permissible to quash the criminal proceedings pending for the offences u/s 406 & 498A of IPC simply for the reason that the parties entered into a compromise and secondly when the offences are not compoundable with or without the permission of the Court u/s 320 of Cr.P.C.?

10. A bird''s eye view of some of the decisions of Hon''ble Apex Court throwing light on this issue needs to be taken where the parties entered into a compromise, but the offence was not compoundable and in such cases, the Hon''ble Apex Court took the view that the fact that the parties had settled their disputes and a long period had elapsed from the date of incident and further fact that the accused persons had already undergone imprisonment, the fact of settling the issue could be taken into consideration for reducing the sentence to the period already undergone. Undeniably and undisputably, the offence u/s 498A of Indian Penal Code is not compoundable u/s 320 of Cr.P.C.

11. In the case of Ishwar Singh Vs. State of Madhya Pradesh, the Hon''ble Apex Court held as under:

It cannot be gainsaid that an offence punishable u/s 307 IPC is not a

compoundable offence. Section 320 Cr.P.C. expressly states that no offence shall be compounded if it is not compoundable under Cr.P.C. At the same time, however, while dealing with such matters, the Supreme Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

It would not be appropriate to order compounding of an offence not compoundable under Cr.P.C. ignoring and keeping aside statutory provisions. However, limited submission of the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant Circumstance which the Court may keep in mind.

12. In the case of Amar Nath Shukla Vs. State of Uttaranchal, the Hon''ble Apex Court observed as under:

In order to live in peace and tranquility, appellant and widow of complainant entering into compromise on intervention of local elders where under an amount of Rs. 1 lakh was given by appellant to the widow aged about 61 years as solatium- Appellant was a young married man having small children, only earning member of the family, and had spent more than seven months in jail- it was held that the offence punishable u/s 436 being non compoundable, the same could not be compounded on the basis of compromise , entered into between the parties. However, having regard to the circumstances interest of justice would be met if sentence is reduced to period already undergone.

13. Sub-section 9 of Section 320 of Cr.P.C. contemplates that, "no offence shall be compounded except as provided by this Section."

14. The language employed in Sub-section (9) of Section 320 of Cr.P.C. is couched in mandatory form directing the courts not to compound the offence or offences except as provided u/s 320 of Cr.P.C.

15. It is a settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions.

16. In the case of Union of India v. Devki Nandan Aggarwal reported in 1992 SCC (L&S) 248, the Hon''ble Apex Court in unequivocal terms held as under:

In a plethora of cases, it has been stated that where the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot re-write the Legislation for the reason that it had no power to legislate. The court cannot, on an assumption that there is a defect or an omission in the words used by the Legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should

be. The courts adopt a construction which will carry out the obvious intention of the Legislature but cannot set at naught Legislative judgment because such course would be subversive of constitutional harmony.

17. In catena of decisions, the Hon'ble Apex Court has deprecated the interference by the High Court in exercise of its inherent powers u/s 482 of Cr.P.C. in a routine manner. It has been consistently held that the power u/s 482 of Cr.P.C. may be exercised sparingly, with circumspection and in the rarest of rare cases. Exercise of inherent power u/s 482 of Code of criminal Procedure is not a rule but it is an exception. The exception is applied only when it is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial would likely to end in acquittal.

18. In the case of *Som Mittal v. Government of Karnataka* reported in (2008) 3 SCC 758 : 2008(4) RLW 3004 (SC), Hon'ble Apex Court held as under:

We may observe here that despite this Court consistently having held in a catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly, with circumspection and in the rarest of rare cases, we often come across the High Court exercising the inherent power u/s 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent power of Section 482 is in the statute book, exercise of such power is not impermissible but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power u/s 482 is not intended to scuttle justice at the threshold.

19. Now advertent to the facts of the instant case, it is found that the accused petitioners were facing trial for the offences under Sections 498A, 406, 323 and 354 of Indian Penal Code. Albeit it is gathered from the record that both the complainant as also the accused petitioners entered into a compromise and both the wife and husband wanted to lead their independent life separately. If the wife and husband enter into a compromise and decide to live together forgetting their past disputes, in such a situation it may be considered to encourage genuine settlements of matrimonial disputes, but in a situation when the parties intend to live separately and settle the disputes after a detailed bargaining of give and take huge amount under the guise of permanent alimony and the parties want to compound the offences which are not compoundable u/s 320 of Cr.P.C. neither High Court should permit to compound for those offences nor is it required for the High Court to invoke inherent powers to quash the criminal proceedings pending in the Court of Judicial Magistrate for the offences under Sections 498-A and 406 of Indian Penal Code as Sub-section (9) does not permit to compound the offences except as provided u/s 320 of Cr.P.C. It is the mandate of the

Legislature and the courts should not endeavour to re-write the legislation for the simple reason that they have no power to legislate. The Hon''ble Apex Court in umpteen cases has deprecated the practice to quash the criminal proceedings pending before the Court for those offences wherein the parties entered into a compromise but they are in-fact not compoundable u/s 320 of Cr.P.C. The parties cannot be permitted to use the courts to act in a manner they like. The sacred thought propounded by the Hon''ble Apex Court in the case of B.S. Joshi (supra) is not applicable to the facts of the instant case. In the case at hand, the parties sought divorce and have settled to live separately. Placing reliance on the judgments of Hon''ble Apex Court delivered in the cases of Ishwar Singh, Amar Nath Shukla and Devki Nandan Agarwal (supra), I do not deem just and proper to quash the criminal proceedings, pending before the Judicial Magistrate, Nokha in case No. 33/2005 titled as State v. Laxmi Narayan and Ors..

20. For the reasons stated above, the criminal misc. petition filed u/s 482 of Cr.P.C. by the petitioner being bereft of any substance deserves to be dismissed, which stands dismissed accordingly.