
(2015) 12 AHC CK 0121
In the Allahabad High Court
Case No : Case No. 2602 of 2015

Liyakat Khan and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 362, 482

Citation : (2015) 12 AHC CK 0121

Hon'ble Judges : Mahendra Dayal, J.

Bench : Single Bench

Advocate : R.J. Trivedi, for the Appellant; M.E. Khan, for the Respondent

Judgement

Mahendra Dayal, J.

(Crl. Misc. Application No. 59454 of 2014)

1. This application for recall of the order dated 05.06.2015 passed by this Court in Crl. Misc. Case No. 2602 of 2015 has been moved on behalf of the applicant-opposite party No. 2.

2. The recall of the order has been sought mainly on two grounds. The first ground is that the applicant-opposite party No. 2 was not given an opportunity of hearing before final disposal of the application under section 482 Cr.P.C. and secondly that the applicants-opposite parties had obtained the aforesaid order dated 05.06.2015 by playing fraud upon the Court.

3. The applicant-opposite party No. 2 was married to one Liyakat Khan in the year 2008. A male child was also born out of the wedlock. However, the relations between them became strained and the applicant-opposite party No. 2 lodged an First Information Report at police station Ghazipur, District Lucknow against her husband Liyakat Khan and members of his family. The police registered the First Information Report at Case Crime No. 666 of 2011 and proceeded to investigate the matter.

4. The opposite party No. 1 and others filed Writ Petition No. 10782 (M/B) of 2011 before this Court for quashing of the First Information Report. Since the dispute between the parties was of matrimonial nature, the matter was referred to the Mediation & Conciliation Centre of this Court, where the parties appeared and settled their dispute. In accordance with the settlement agreement, the applicant-opposite party went with her husband Liyakat Khan but according to her, she was again ill treated and thereupon she came back to live with her parents. This Court therefore vide order dated 25.07.2014 disposed of the writ petition with the direction that the petitioners shall not be arrested till the submission of police report under Section 173(2) CrPC. In the meantime, the police concluded investigation and submitted charge-sheet against Liyakat Khan and others. They preferred an application under section 482 Cr.P.C. for quashing of the charge-sheet being Criminal Miscellaneous Case No. 1999 of 2014. In this application, notices were issued and an interim order was passed that no coercive measure shall be taken against them. However, the applicant-opposite party appeared before the Court and filed her counter-affidavit with the allegation that since her husband Liyakat Khan has acted in violation of the settlement agreement, therefore, the charge-sheet should not be quashed. By the order dated 12.08.2014, this Court on the aforesaid ground, vacated the interim direction granted by this Court. On 18.04.2015, the aforesaid application under Section 482 Cr.P.C. was disposed of with the direction that the parties may within one month file compromise before the court below and the trial court shall accept the compromise after its due verification irrespective of the fact that some of the offences are non compoundable. It was further provided that till then Liyakat Khan and others shall not be compelled to get them bailed out. It is not disputed that the parties did not file any compromise before the court below. Since no compromise was filed by the parties, therefore, learned trial court directed the accused persons, namely, Liyakat Khan and others to get themselves bailed out. This order was passed by the trial court on 02.06.2015. Liyakat Khan and others on the very next day i.e. on 03.06.2015 filed another application under section 482 Cr.P.C. for quashing of the charge-sheet on the ground that the learned trial court was insisting upon all the parties to sign the compromise while as a matter of fact the settlement was between Liyakat Khan and his wife who is applicant in the instant application. It was also stated in paragraph-11 of the application that the trial court was adamant that all the accused persons should appear before the court otherwise non bailable warrant would be issued against them. This Court on 05.06.2015 when the case was taken up, on the basis of earlier order dated 18.04.2015 and also on submission that the parties have entered into compromise, allowed the application and quashed the charge-sheet as well as the proceedings of Criminal Case No. 666 of 2011 pending in the court of Special Chief Judicial Magistrate, Lucknow.

5. I have heard Sri M.E. Khan, learned counsel appearing for the applicant-opposite party No. 2 and Sri R.J. Trivedi, learned counsel for the opposite parties/petitioners.

6. Sri M.E. Khan, learned counsel for the applicant-opposite party No. 2 submits that the aforesaid order dated 05.06.2015 has been passed on the very first day when the petition under section 482 Cr.P.C. came up for hearing before the Court. The order referred to above clearly reveals that the order was passed without issuing any notice to the applicant-opposite party No. 2. The opposite parties on 05.06.2015 gave an impression to the court that the parties have entered into compromise and learned trial court was insisting for presence of all the parties before accepting the compromise. As a matter of fact, there was absolutely no compromise between the parties. When the matter was referred to the Mediation & Conciliation Centre of this Court while hearing the Writ Petition No. 1078 (M/B) of 2012 for quashing of the First Information Report, the applicant-opposite party No. 2 in order to save her matrimonial relations, agreed to live with her husband Liyakat Khan but since he did not mend his ways, the applicant-opposite party No. 2 left his company and came back to her parents. The writ petition was finally disposed of on 25.07.2014 on the ground that there was a settlement agreement between the parties. When the opposite parties filed petitions under section 482 Cr.P.C. for quashing of the charge-sheet, and it was pointed out that Liyakat Khan has again ill treated his wife, this Court on 12.08.2014 vacated the interim order but subsequently by the order dated 18.04.2015 the petition was disposed of with the direction to the parties to file compromise before the court below. However, no compromise was filed before the court below and consequently learned trial court issued non bailable warrant and insisted the accused persons to appear and seek bail. When the case was fixed for their appearance, they filed another application for quashing of the charge-sheet under section 482 Cr.P.C. on false allegation that the learned trial court was insisting upon all the parties to appear for verification of the compromise while there was absolutely no compromise on record of the court below. This Court under the impression that the compromise has already been filed before the court below, disposed of the petition and quashed the charge-sheet. Thus, the order has been obtained by placing wrong facts before the Court and the applicant-opposite party No. 2 was not given any opportunity of hearing before the order dated 05.06.2015 was passed.

7. Learned counsel for the opposite party Sri Ram Ji Trivedi has submitted that the compromise was actually arrived at between the parties before the Mediation & Conciliation Centre and in pursuance thereof the applicant-opposite party No. 2 started living with her husband but since her only intention was to harass her husband and his family members, therefore, she went back and started pursuing the criminal case in which the police had submitted charge-sheet. As there was no option left for the opposite parties, they filed application for quashing of the charge-sheet in which the parties were directed to file compromise before the court below but the applicant-opposite party No. 2 knowingly did not file any compromise and pursued the criminal case in order to get her husband and his family members punished. It was for this reason that a second application for quashing of the charge-sheet was filed in which this Court passed final order on

05.06.2015 quashing the charge-sheet as well as the criminal proceedings.

8. Sri Ram Ji Trivedi, learned counsel for the opposite parties has raised a preliminary objection that since final order has been passed on 05.06.2015 therefore this Court can not review its own order as the same is barred by section 362 of the Code of Criminal Procedure which prohibits the court to alter its judgment or order once it is finally passed. He has relied upon a Supreme Court decision reported in State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., , in this case Hon''ble Supreme Court has held that section 362 Cr.P.C. specially prohibits the Court to review its own order or reconsider the matter for recording a conflicting decision unless there has been change in circumstances of the case. It has also been observed that even the High Court in exercise of its inherent power under section 482 Cr.P.C. cannot alter or review the order.

9. Reliance has also been placed upon a decision of the Supreme Court reported in AIR 2014, page 2291 in which it has been held that once the order is dictated in open court but is not signed, the court may recall its order and direct the appeal to be reheard. Thus, the order should be recalled only if it is not signed. Once the order is pronounced and signed, the Court can not review its own order as the same is prohibited under section 362 Cr.P.C. It has also been submitted by Sri Trivedi that the present application has been moved only with a view that the criminal case be reopened and the opposite parties be punished. The applicant-opposite party No. 2 has never been willing to live with her husband. Her only intention is to get opposite parties punished in one way or the other.

10. In reply to the aforesaid arguments, Sri M.E. Khan learned counsel appearing for the applicant-opposite party No. 2 has argued that the application has been moved for recall of the order and not for its review. According to him, there is a difference between review and recall. The basic difference between the two is that in the matter of recall, the merit of the case is not considered while in case of review the Court has to enter into merit of the case. In support of his contention, he has placed reliance upon a Supreme Court decision reported in AIR 2011 page 1232. In this case the Hon''ble Supreme Court has drawn the distinction between the review petition and recall application. It has been held that in a review petition the court considers on merits where there is an error apparent on the face of the record but in a recall petition the court does not go into merit but simply recalls an order which was passed without giving opportunity of hearing to an affected party.

11. After hearing learned counsel for the parties and after considering the series of the incidents happened in this case from very beginning and also in the background of the circumstances, referred to hereinabove, one thing which emerges out is that a settlement was arrived at between the parties before the Mediation & Conciliation Centre of this Court in the year 2012 and in pursuance thereof the applicant-opposite party No. 2 went to live with her husband but again their relations became strained and she left the company of her husband

and started leaving with her parents. The police, in the meantime, filed charge-sheet and in Criminal Miscellaneous Case No. 1999 of 2014 filed for quashing of the charge-sheet, a direction was given to the parties to file compromise before the court below within a month but no compromise was filed. Thereafter when the trial court compelled the accused persons to get themselves bailed out, they filed another application for quashing of the charge-sheet giving an impression to this Court that the learned trial court was not accepting the compromise and was insisting upon all the parties to appear in person. It was also impressed upon the Court that the parties have entered into settlement but as per the applicant-opposite party No. 2 no compromise was ever filed by the parties. This fact is also evident from the order-sheet, a copy which has been filed by the applicant-opposite party No. 2 along with her counter-affidavit. It is also not in dispute that while passing the order dated 05.06.2015 no notice was issued to the applicant-opposite party No. 2 and final order was passed.

12. In the aforesaid circumstances, the order dated 05.06.2015 deserves to be recalled and an opportunity of hearing to the applicant-opposite party No. 2 is required to be given before final disposal of the application for quashing of the charge-sheet and the criminal proceedings.

13. The application for recall of the order is accordingly allowed and the order dated 05.06.2015 is hereby recalled. The applicant-opposite party No. 2 is given opportunity to file her counter-affidavit and thereafter the matter shall be placed before the Court having roaster to hear the application under section 482 Cr.P.C. This matter shall not be treated as tied up or part heard with this Bench. It is also made clear that by recall of the order dated 05.06.2015, the criminal proceedings arising out of Crime No. 666 of 2011 shall not be revived and the same shall be subject to the final disposal of the application for interim relief made in the application under section 482 Cr.P.C.