
(1997) 08 AHC CK 0065

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3704 of 1996

Madhurima Bhargava and Others

APPELLANT

Vs

State of U.P.and Another

RESPONDENT

Date of Decision : 21-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320
Penal Code, 1860 (IPC) — Section 498A

Citation : (1997) 08 AHC CK 0065

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Allowed

Judgement

S.K. Phaujdar, J.—Heard Sri B.K. Awasthi for the applicant and Sri Puskar Mahrotra for respondent. No. 2, as well as the learned AGA.

2. The present application has been filed for quashing the impugned charge sheet for the offence under Section 498A I.P.C. and Section 3/4 Dowry Prohibition Act at the instance of the wiferespondent against the husband and other relations of the husband who figure as the applicants in this case. This relates to case Crime No. 1192 of 1992, corresponding to Criminal Case No. 799 of 1994 pending before the CJM, Nainital. At the present stage, it is submitted on behalf of both the parties that the husband and the wife have arrived at a compromise and there had been a mutual divorce and the wife is not willing to proceed with the case, and as such he should be allowed to compound the case and the proceedings are to be dropped.

3. An offence under Section 498A I.P.C. is not compoundable directly or even with the permission of the Court as per Section 320 Cr. PC. There is yet another question. The case was initiated by an FIR and not on a complaint. After an investigation, chargesheet has been submitted. The learned counsels rely on a decision of the Allahabad High Court (Rahul Aganval v. State), 1997 JIC 190 in which the Court had allowed an application under Section 482 Cr. PC. and quashed the criminal proceeding between a wife as all other disputes between

them were amicably settled except the concerned case. The Court was of the view that no useful purpose would be served in a long trial which may not succeed. The Court had relied on two decisions of the Punjab and Haryana High Court, as quoted therein.

4. Reliance was further placed on a decision of the Patna High Court in the case of Jai Prakash Chaurasia reported in 1994 JIC 939. It was also a case of 498A, IPC and other offences under the Indian Penal Code. The offences were not compoundable. The wife-complainant was not willing to prosecute and they had filed a joint compromise petition. The Court accorded the permission to compound and directed the Magistrate to record a compromise after giving an opportunity to the parties of being heard. A third decision was relied upon by the learned counsel which was pronounced by the Supreme Court. It was a case under Section 307 I.P.C. The Supreme Court, however, was of the view that under the special circumstances the Court could permit it to be compounded, although it was not compoundable. The Supreme Court directed the trial Judge to accord permission to the parties to compound the offences after being satisfied on the compromise agreed upon.

5. The power of the Supreme Court under Article 142 of the Constitution are widest. Under this Article the Supreme Court may pass such order as may be necessary for doing complete justice in any case or in a matter pending before it. There is no parallel power given to the High Court, as has been given to the Supreme Court under this Article.

6. Section 482 Cr. P.C. is certainly there for the High Court to exercise powers for the ends of justice, or for preventing abuse of the process of the Court. A question would, however, always arise that if certain act is not permitted to be done under the Cr. P.C. whether the same could be done under the garb of exercise of the inherent powers. Offences, under our conception, are committed against the society although a particular individual may be a victim thereof. Only under this conception, the State takes up the responsibility of prosecuting criminal cases. Even in cases instituted on a complaint, once the charges are framed, the complainant is absolved of his responsibilities of producing his witnesses and it becomes the duty of the Court to summon them for cross-examination. If a single individual compounds her differences with another, as in this case, a question would always remain; whether such compromise beyond the powers of Section 320 Cr. P.C. should be allowed.

7. In view of the earlier decision of this Court in the case of Rahul Agarwal, (supra) from which I humbly differ, I think that the matter should be placed before a larger bench so that a binding decision on this point may be had. For reference to the larger bench the following question is framed.

?Whether in exercise of powers under Section 482 Cr. P.C. the Court could direct compounding of offences which are not made compoundable under Section 320 Cr. P.C. specially in a case under Section 498A, IPC.?

8. Let this record be placed before the Hon''ble the Chief Justice for constitution of a division bench or a full bench to answer the aforesaid question.
9. The interim order stands extended till the decision of the larger bench.