

(2009) 10 AHC CK 0010
In the Allahabad High Court
Case No : Criminal M. Case No. 3748 of 2009

Mohd. Ishaq and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A

Citation : (2010) 2 ACR 1807

Hon'ble Judges : Raj Mani Chauhan, J

Bench : Single Bench

Advocate : Saurabh Misra, for the Appellant; Anupam Pandey and A.G.A., for the Respondent

Judgement

Raj Mani Chauhan, J.—Short counter-affidavit filed on behalf of the Respondent No. 2, is taken on record.

2. Heard learned Counsel for the Petitioners, the learned Counsel for the opposite party No. 2 and the learned A.G.A. for the opposite party No. 1 the State of U.P.

3. This application u/s 482, Code of Criminal Procedure has been moved by the accused-Petitioners, for quashing the charge-sheet filed by the Investigating Officer in Case Crime No. 45 of 2007, under Sections 498A and 323, I.P.C. and Section 3/4, D.P. Act, police station Mahila Thana, district Lucknow, and the proceeding of Criminal Case No. 7113 of 2009, State v. Mohd. Ishaq and Ors. under Sections 498A and 323, I.P.C. and Section 3/4, D.P. Act arising thereon pending in the Court of Chief Judicial Magistrate, Lucknow.

4. In this case the only legal question involved for consideration is whether the charge-sheet filed by the Investigating Officer in case crime number referred to above and the proceeding of Criminal Case No. 7113 of 2009 arising thereon as mentioned above may be quashed.

5. Since the Counsel for the opposite party No. 2 has put in his appearance, therefore, the application is being disposed of finally at the admission stage.

6. The relevant facts giving rise to the present application may be briefly stated as under:

7. The opposite party No. 2 Smt. Shabana wife of applicant-accused No. 1 Mohd. Ishaq lodged a written report on 21.4.2007 at Mahila Thana, Lucknow with the allegation that she had been married to accused-applicant No. 1 Mohd. Ishaq son of Abdul Razzaq, resident of 163/54, Chikmandi, Molviganj, P.S. Aminabad district Lucknow on 7.4.2004. Her family members had spent as per their capacity on her marriage including payment in cash and presents of articles of domestic use to accused No. 1 in form of dowry but when he went to her marital home following her marriage, her husband Mohd. Ishaq, her brother-in-law (Jeth) Abdul Salam, her sister-in-law (Jethani) Smt. Museem wife of Abdul Salam, her sister-in-law (Nanad) Sohala Parveen daughter of Abdul Razzaq (all accused) expressed their dissatisfaction over the dowry presented by her family members to the accused Mohd. Ishaq. They put a fresh demand of colour T.V., Hero Honda Splendor Motorcycle and Rs. 20,000 in cash before her in form of dowry. When she expressed her inability to satisfy their demand, they started to harass and torture her. When she brought this fact to the notice of her family members, they managed for one colour T.V. to her husband and they also paid Rs. 10,000 in cash to him. Even then the accused continued to harass and torture her. In the meantime she gave birth to a mail child out of her wedlock. All the accused on 19.4.2007 had badly beaten her. She was having pregnancy at that time. She sustained injuries on her abdomen too. Her brother on the next day visited her house and took her back. Since then she has been residing with them.

8. On the written report of the complainant, the police of police station Mahila Thana, Lucknow registered case under Sections 498A and 323, I.P.C. and Section 3/4, D.P. Act, at Crime No. 45 of 2007 against the accused for investigation. The Investigating Officer after investigation filed charge-sheet against the accused in the Court of Chief Judicial Magistrate, Lucknow, who on the basis of police report had taken cognizance of the offence as disclosed in the police report, which gave rise to the Criminal Case No. 7113 of 2009, State v. Mohd. Ishaq and Ors. under Sections 498A and 323, I.P.C. and Section 3/4, D.P. Act.

9. The accused-applicants have moved this application u/s 482, Code of Criminal Procedure to quash the proceeding arising out of charge-sheet mentioned above on the ground that the opposite party No. 2 had filed an application u/s 125 of the Criminal Procedure Code for maintenance before the Principal Judge, Family Court, Lucknow, which was pending for disposal. But on persuasion of relatives, well wishers and friends of the parties, applicant No. 1 Mohd. Ishaq and opposite party No. 2 settled their dispute out of the Court. As per settlement they shed their grievance against each other. They agreed to lead peaceful healthy matrimonial life. In support of the settlement both of them executed a mutual

agreement on 8.9.2009 (Annexure-3). The applicants have alleged that in compliance of the agreement opposite party No. 2 alongwith her kid returned back her matrimonial home on 11.9.2009 and since then they are living happily and leading healthy matrimonial life. The opposite party No. 2 in compliance of compromise moved an application before the Principal Judge, Family Court, Lucknow for withdrawal of her application moved u/s 125, Code of Criminal Procedure which was allowed by the Court and the application was dismissed as withdrawn. Since the parties have come to a term and they have resumed their matrimonial life, therefore, it will be harassment to the applicants in case the criminal proceeding is permitted to continue against them in the Court of Chief Judicial Magistrate, Lucknow. The High Court in its extra-ordinary jurisdiction u/s 482, Code of Criminal Procedure and to secure the ends of justice as well as to reunite the spouses, who were at both ends of pole can quash the criminal proceeding pending in the Court of Chief Judicial Magistrate, Lucknow.

10. The opposite party No. 2 has filed short counter-affidavit in which she has admitted the facts as alleged by the applicants in their application.

11. Learned Counsel for the applicant contends that the opposite party No. 2 had initiated the criminal proceeding against her husband and his family members under Sections 498A and 323, I.P.C. and Section 3/4, D.P. Act, when their relations were strained. On persuasion of relatives, well wishers and friends of the parties they realise their faults and mutually settled the grievances out of Court. In support of this fact they also executed an agreement and in compliance of the terms of the compromise the opposite party No. 2 returned back to her matrimonial home and she alongwith her kid is living peacefully with her husband and is leading healthy matrimonial life. In case the criminal case pending against the accused is permitted to continue it will not only be harassment to the applicants but it may disturb the peaceful matrimonial life of applicant No. 1 and opposite party No. 2. Since opposite party No. 2 has resumed her matrimonial life and is living with her husband. Therefore, the High Court in the ends of justice in its extra-ordinary power u/s 482, Code of Criminal Procedure can quash the criminal proceeding pending against the accused-applicant.

12. Learned Counsel in support of his argument has placed reliance on a case of B.S. Joshi and Others Vs. State of Haryana and Another, decided by the Hon''ble Apex Court.

13. I have gone through the affidavits filed by the applicant and the short counter-affidavit filed by the opposite party No. 2. The opposite party No. 2 in her affidavit has admitted that she and her husband/applicant No. 1 Mohd. Ishaq have settled their matrimonial disputes by mutual agreement on persuasion of their well wishers. Now she is living with her husband and leading healthy matrimonial life. The Hon''ble Apex Court in the case of B.S. Joshi and Ors. (supra) has held that in case of matrimonial offences if wife and husband have settled the dispute and resumed their matrimonial relations it is the duty of the

Court to encourage the genuine settlement of matrimonial disputes. The Apex Court has also observed that it will be most hyper technical view to hold that the offence u/s 498A is non-compoundable. In case husband and wife settle their dispute it becomes the duty of the Court to encourage settlements and the High Court in its exercise of extra-ordinary powers u/s 482, Code of Criminal Procedure can quash the criminal proceedings pending against the husband and his family members. The relevant observation of Hon"ble Apex Court finds place in paragraphs 14 and 15 of the judgment, which is being extracted below:

14. There is 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 harass or torture 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 is every likelihood that none exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or F.I.R. or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code.

14. In this case admittedly applicant No. 1 and his wife opposite party No. 2 have settled their disputes. They have executed compromise/agreement on 8.9.2009. The opposite party No. 2 has already returned to her matrimonial home on 11.9.2009 and she alongwith her husband and child leading healthy matrimonial life. Therefore, it will be proper to quash the criminal proceeding initiated by opposite party No. 2 against her husband and his other family members as mentioned above to maintain the good relations between her as well as her husband applicant No. 1. The application, therefore, deserves to be allowed.

15. The application is, therefore, allowed and the charge-sheet filed by the Investigating Officer in Case Crime No. 45 of 2007 as well as Criminal Case No. 7113 of 2009, State v. Mohd. Ishaq and others, arising out of Case Crime No. 45 of 2007, under Sections 498A and 323, I.P.C. and Section 3/4, D.P. Act, P.S. Mahila Thana, Lucknow are quashed.