
(2008) 04 BOM CK 0143

In the Bombay High Court

Case No : Criminal Writ Petition No. 2227 of 2007

Mr. Biswaroop Ghosh and Others

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 306, 307, 326, 34, 376

Citation : (2008) CriLJ 2521

Hon'ble Judges : V.M. Kanade, J;S.S. Shinde, J

Bench : Division Bench

Advocate : O.P. Singh, for the Appellant; A.S. Pai, APP and Mahesh M. Pawar, for the Respondent

Judgement

1. Heard learned Counsel for the Petitioners, learned APP for the State and learned Counsel for the Respondent No. 2.

2. By this petition which is filed u/s 482 of Cr.P.C. and under Article 227 of Constitution of India, the Petitioners are seeking order of this Court for quashing of the complaint which is filed by the Respondent No.2 u/s 498-A r/w 34 of IPC against the Petitioners vide F.I.R.No.338/05 dated 21/12/2005. Petitioner No.1 and Respondent No.2 got married on 08/12/2003 and after married had broken, Petitioner No.1 went back to his parents and Respondent No.2 lodged a complaint u/s 498-A of IPC r/w 34 of IPC. Thereafter in July, 2006, Petitioner No.1 filed a Divorce Petition in the Family Court, Bandra. Said petition was converted into petition for divorce by mutual consent. In this petition consent terms were filed on 17/10/2007 and permanent alimony of Rs.2,00,000/-was paid by the Petitioner No.1 to the Respondent No.2 and petition was decreed and divorce was granted. One of the terms in the consent terms was that the Respondent No.2 would withdraw the complaint which she had filed u/s 498-A r/w 34 of IPC.

3. Parties are present in the Court. We have asked the Respondent No.2 whether she has granted consent for withdrawing the complaint u/s 498A r/w 34 of IPC and she has replied in the affirmative. We have also asked Mrs. A.S. Pai, the learned APP to have talk with the Respondent No.2 in order to find out whether consent which was given by her in the Family Court was free consent. Accordingly, the learned APP has asked the Respondent No.2. We have been informed that the Respondent No.2 has stated that consent which was given by her in the Family Court was not under any pressure. Learned APP informed us that chargesheet has been filed.

4. Respondent No.2 has also filed an affidavit in this Court dated 21st February, 2008 in which she has stated that she has no objection if the complaint u/s 498-A r/w 34 is quashed. Learned Counsel for the Petitioners and the Respondent No.2 have relied on the judgment of the Apex Court in the case of B.S. Joshi and Others Vs. State of Haryana and Another, wherein the Apex Court in para 15 has observed as under:

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

5. In view of ratio of the judgment, it is well settled position in law that power of the High Court u/s 482 of Cr.P.C. is not curtailed by the provisions of Section 320 of Cr.P.C. and the High Court under its inherent jurisdiction can quash the criminal proceedings.

6. Mrs. Pai, the learned APP for the State also invited our attention to the judgment of the Full Bench of this Court in the case of Abasaheb Yadav Honmane v. The State of Maharashtra and, more particularly, paragraph Nos.16 and 17 of the said judgment. Full Bench of this Court also in the said judgment has observed as under:

16. In the light of the above detailed analysis of the principles of law involved in the case, now, we would revert back to the order of reference and the questions referred therein. The order can discern be dissected into three different portions: (a) what were the facts and law laid down by the Supreme Court in the case of B.S. Joshi (supra); (b) does the High Court under its inherent powers u/s 482 of the Criminal Procedure Code have the power to allow compounding of offences other than offences punishable u/s 498A of the IPC, particularly, for the offences punishable under Sections 306, 307, 326, 376, 406, 495 IPC, and (c) whether such a power can be exercised at the trial stage or at the appellate stage.

17. We record our answer to the above three portions of the reference order as follows:

Answer to (a): As already noticed, the facts of B.S. Joshi" case have been recorded in paragraphs 3 and 4 of that judgment. The parties had not prayed for compounding of an offence in terms of Section 320 of the Code but had prayed

for quashing of the FIR in view of the terms and conditions recorded in the petition for mutual divorce in furtherance to which statements of the parties on first and second motion were recorded by the Additional District Judge, Delhi. The High Court had dismissed the petition for quashing of the FIR on the ground that the offence was not one compoundable u/s 320 and, therefore, it could not be quashed in exercise of powers u/s 482. The Supreme Court, in fact, at the outset of the judgment in paragraph two formulated the question that it was examining the ambit of the inherent powers of the High Court u/s 482 of the Criminal Procedure Code and whether Section 320 could restrict such powers of the Court. The Supreme Court concluded and, with approval, stated the view which had consistently been taken since Ram Puja's case (1973) that only those offences could be compounded which are mentioned in Section 320 and, those which are not mentioned therein cannot be permitted to be compounded. Consistent with its earlier view the Supreme Court also held that powers u/s 482 of the Code are not limited or affected by the provisions of Section 320 of the Code.

Answer to (b): It is thus answered in the negative. Neither an offence u/s 498A nor any other offence under the IPC which is not specifically enumerated in Section 320 of the Code can be compounded by the court in exercise of its powers u/s 320 and for that matter by High Court in exercise of its inherent powers u/s 482 of the Code.

However, we hasten to add here that the inherent powers u/s 482 of the Code include powers to quash FIR,. Investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. These powers are neither limited nor curtailed by any other provisions of the Code including Section 320 of the Code. The Court could exercise this power in offences of any kind, whether compoundable or non-compoundable. However, such inherent powers are to be exercised sparingly and with caution and in conformity with the precepts indicated in paragraph 7.10 of this judgment. Further, the Court should ensure that object and purpose of passing any order in exercise of its inherent powers should be confined to one of the three categories stated in Section 482 of the Code.

Answer to (c): The power to compound can be exercised at the trial stage or even at the appellate stage subject to satisfaction of the conditions postulated by the legislature u/s 320 of the code.

7. In view of ratio of the judgment of the Full Bench of this Court, we are of the view that power of the High Court u/s 482 of Cr.P.C. is not curtailed or restricted by Section 320 of Cr.P.C. In the present case, the Petitioners are seeking quashing of the complaint which is filed u/s 498-A r/w 34 of IPC. The Respondent No.2 also gave her no objection to the quashing of the complaint. Ratio of the

judgment of the Apex Court in the case of B.S. Joshi (supra) would also squarely apply to the facts of the present case. Parties have now amicably resolved the dispute. Decree of divorce has already been passed in the Family Court and they have separated. Respondent No.2 also received permanent alimony and therefore, it is in the best interest of both the parties that they start a fresh chapter in their life and for that purpose it is essential that criminal proceedings to be quashed. We have also perused F.I.R. and in the F.I.R. we noticed that allegations are not of serious nature. In the circumstances, F.I.R. and chargesheet are quashed. Rule is made absolute in terms of prayer Clause (a). Writ Petition is disposed of accordingly.