

(2016) 03 DEL CK 0084

In the Delhi High Court

Case No : Crl. M.C. 1998/2015 and Crl. M.A. No. 7118/2015

Naeem

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, Section 482
Penal Code, 1860 (IPC) — Section 34, Section 406, Section 498A

Citation : (2016) 03 DEL CK 0084

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : N.K. Jain, Advocate, for the Appellant; M.P. Singh, APP, for the Respondent

Final Decision : Disposed off

Judgement

P.S. Teji, J.—1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner, namely, for Mohd. Naeem for quashing of FIR No. 342/2006 dated 06.11.2006, under Sections 498A/406/34 IPC registered at Police Station Chandni Mahal on the basis of the mediation report, Delhi Mediation Centre, Tis Hazari Courts, Delhi in view of the settlement arrived at between the petitioner and respondent No. 2, namely, Smt. Samreen on 12.11.2013.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been identified to be the complainant/first-informant of the FIR in question by her counsel.

3. The factual matrix of the present case is that the marriage between the Mohd. Muqem and the respondent no.2 was solemnized on 21.04.2003 as per Muslim rites and customs. The complainant was maltreated, misbehaved with and taunted by the accused persons. The husband of the complainant was a daily drinker and he at the instance of his mother sold all the gold ornaments of the complainant. On 15.05.2006, after snatching the child from the complainant, she was given beatings and she was thrown out of the matrimonial home. On

30.05.2006, the husband of the complainant came to her parental home and threatened the complainant with dire consequences.

Thereafter, the respondent no.2/complainant, lodged the FIR in question against her in-laws including the petitioner-herein (brother- in-law of the complainant). The charge sheet was filed by the police. The husband/accused of the complainant expired on 23.08.2011. Accused/Aquila also expired on 03.12.2014. Accused, namely, Naeema, Afroj and Nafisa vide order dated 21.03.2012 were discharged by the Trial Court. Hence, only the petitioner was left and during the pendency of the case, with the intervention of the respectable persons, the petitioner and respondent no.2 arrived at an amicable settlement.

4. Respondent No. 2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the mediation report, it has been agreed that the children namely, Iqra, Aquib and Abdul Karim shall remain in the custody of the petitioner and that the respondent no.2 shall have visitation rights with the children on second and fourth Sunday of every month where the children shall be taken by respondent no.2 from the house of the petitioner at around 10:00 A.M. in the morning and shall be brought back by 4:00 P.M. in the evening on the same day. It is also agreed that respondent no.2 shall be at liberty to take the children on any special occasion i.e. birthday, marriage etc. in the family. It is also agreed that the quashing petition shall be filed by the petitioner before the concerned Court for the quashing of the FIR in question and that respondent no.2 shall cooperate with the petitioner for the same by making appropriate statements before this Court. It is also agreed that the respondent no.2 is not left with any claim whatsoever against all the accused persons. It is also agreed that this settlement is full and final and that both parties undertake not to file any case/complaint/suit/petition against each other and shall be entitled to lead their life independently and both the parties shall not interfere in the lives of each other and that of their family members. Respondent No. 2 affirmed the contents of the aforesaid settlement. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioner survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the respondent No. 2 has been recorded in this regard in which she stated that she has entered into a compromise with the petitioner and has settled all the disputes with him. She further stated that she has no objection if the FIR in question is quashed.

5. In *Gian Singh v. State of Punjab* , (2012) 10 SCC 303 Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

"61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is

put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466. The relevant observations of the Apex Court in *Narinder Singh* (Supra) are as under:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent no.2 agrees to the quashing of the FIR in question without any threat or coercion or undue influence and has stated that the matter has been settled out of her own

free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. and in the case of Inder Singh Goswami v. State of Uttaranchal [] has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

10. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of B.S. Joshi and others v. State of Haryana and another , 2003 (4) SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact the offence under Section 498A IPC is a non- compoundable offence, there should be no impediment in quashing the FIR under this section, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

11. The Courts in India are now normally taking the view that endeavour should be taken to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs such as, matrimonial disputes between the couple or/and between the wife and her in-laws. India being a vast country naturally has large number of married persons resulting into high numbers of matrimonial disputes due to differences in temperament, life-styles, opinions, thoughts etc. between such couples, due to which majority is coming to the Court to get redressal. In its 59th report, the Law Commission of India had emphasized that while dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. Further it is also the constitutional mandate for speedy disposal of such disputes and to grant quick justice to the litigants. But, our Courts are already over burdened due to pendency of large number of cases because of which it becomes difficult for speedy disposal of matrimonial disputes alone. As the matrimonial disputes are mainly between the husband and the wife and personal matters are involved in such disputes, so, it requires conciliatory procedure to bring a settlement between them. Nowadays, mediation has played a very important role in settling the disputes, especially, matrimonial disputes and has yielded good results. The Court must exercise its inherent power under Section 482 Cr.P.C. to put an end to the matrimonial litigations at the earliest so that the parties can live peacefully.

12. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility and is a fit case for this Court to exercise its inherent jurisdiction.

13. In the facts and circumstances of this case, in view of statement made by the respondent No. 2 and the compromise arrived at between the parties, the FIR in question warrants to be put to an end and proceedings emanating thereupon need to be quashed.

14. Accordingly, this petition is allowed and FIR No. 342/2006 dated 06.11.2006, under Sections 498A/406/34 IPC registered at Police Station Chandni Mahal and the proceedings emanating therefrom are quashed against the petitioner.

15. This petition is accordingly disposed of.

16. Application CrI.M.A. No. 7118/2015 is also disposed of.