

(2009) 08 AHC CK 0004
In the Allahabad High Court
Case No : Criminal M. A. No. 16003 of 2009

Prem Shanker Pandey and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 320(9), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 420, 468

Citation : (2009) 3 ACR 3148

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Advocate : Raghavendra Dwivedi and S. Dwivedi, for the Appellant; Yadvendra Dwivedi and A.G.A., for the Respondent

Judgement

Vijay Kumar Verma, J.—By means of this application u/s 482 of the Code of Criminal Procedure (in short, "the Cr. P.C."), the applicants (1) Prem Shankar Pandey, (2) Sanjay Pandey, (3) Guddan, (4) Rajal, (5) Sonu and (6) Smt. Siyarani have invoked inherent jurisdiction of this Court for quashing the proceedings of Criminal Case No. 7144 of 2005, State v. Prem Shankar Pandey and others Criminal Case No. 7144 of 2005 arising out of Case Crime No. 136 of 2001, under Sections 498A and 323, I.P.C. and Section 3/4 of D. P. Act P.S. Maharajpur, District Kanpur Nagar pending in the Court of Addl. Chief Metropolitan Magistrate-1, Kanpur Nagar.

2. Shorn of unnecessary details, the facts leading to the filing of the application u/s 482, Cr. P.C. in brief, are that marriage of applicant No. 1 Prem Shankar Pandey and opposite party No. 2 Smt. Rubey Pandey took place on 28th June, 1999, but subsequently some misunderstanding and disputes were developed between the couple, as a result of which Smt. Rubey Pandey lodged an F.I.R. on 18.6.2001 at P. S. Mahrajpur (Kanpur Nagar), where a case under Sections 498A and 323, I.P.C. and Section 3/4 of D. P. Act was registered at Crime No. 136 of 2001 against the applicants. After investigation, final report was submitted by the

police. Against that final report, Smt. Rubey Pandey filed protest petition. A.C.M.M. Court No. 3, Kanpur Nagar vide order dated 11.1.2005 summoned the accused persons to face the trial under Sections 498A and 323, I.P.C. and Section 3/4 of D. P. Act after rejecting the final report. On the basis of that summoning order, Crl. Case No. 7144 of 2005 was registered against the applicants. During pendency of that case, the parties settled their dispute amicably in the year 2006 and in pursuance of that settlement, the applicant Prem Shankar Pandey and Smt. Rubey Pandey began to live together. As a result of the settlement entered into between the parties, the applicants have invoked the inherent jurisdiction of this Court to quash the proceeding of aforesaid criminal case.

3. I have heard arguments of Sri Raghavendra Dwivedi, advocate, appearing for the applicants, Sri Yadvendra Dwivedi, advocate, representing the complainant/opposite party No. 2 and learned A.G.A. for the State.

4. It was submitted by learned Counsel for the applicants that no useful purpose would be served to continue the proceedings of criminal case pending in the court below, because the parties have settled their dispute amicably outside the Court and applicant No. 1 and O. P. No. 2 are living together peacefully. For this submission, my attention was drawn towards the counter-affidavit filed by O. P. No. 2 Smt. Rubey Pandey on 27.7.2009. It was also submitted by learned Counsel for the applicant that although Section 498A, I.P.C. and Section 3/4 of D. P. Act are not compoundable, but this Court under its inherent power can quash the proceeding of aforesaid criminal case. For this submission reliance has been placed on B. S. Joshi and Ors. v. State of Haryana and Anr. XLVI 2003 ACC 779: 2003 (2) ACR 1305 (SC).

5. The learned A.G.A. on the other hand, contended that the offences punishable u/s 498A, I.P.C. and Section 3/4 of D. P. Act are not compoundable and since there is specific bar u/s 320(9), Cr. P.C. to compound the offences, which are not compoundable u/s 320(1)(2), Cr. P.C., hence, this Court cannot quash the proceedings of aforesaid criminal case.

6. I have carefully considered the submissions made on behalf of the respective parties and the facts involved in this case. I am not inclined to accept the aforesaid contention of learned A.G.A. In my opinion, in appropriate cases where the dispute is of a personal nature and the parties have settled the dispute amicably, the High Court in exercise of its inherent power u/s 482, Cr. P.C. can quash the criminal proceedings even in those cases where the offences are non-compoundable. Reference in this context may be made to the case of Manoj Sharma v. State and others LXIV 2009 ACC 320, in which the criminal proceedings arising out of the F.I.R. u/s 420/468/471/ 34/120B, I.P.C. was quashed by Hon'ble Apex Court on the basis of the settlement arrived at between the parties. Section 320, Cr. P.C. cannot be read in isolation. It has to be read along with other provisions of the Code. One such other provision is Section 482, Cr. P.C. which reads thus:

Section 482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of the justice.

7. The words "Nothing in this Code" used in Section 482 is a non-obstante clause, and give it overriding effect over other provisions in the Cr. P.C. The words "or otherwise to secure the ends of justice" in Section 482 implies that to secure the interest of justice, sometimes (though only in very rare cases) the High Court can pass an order in violation of a provision in the Cr. P.C.

8. It is true that in certain decisions of the Hon''ble Apex Court, it has been observed that the power u/s 482, Cr. P.C. cannot be exercised to do something which is expressly barred under the Code, vide *Mosst Simrikhia v. Dolley Mukherjee* AIR 1990 SC 1605 ; *R.P. Kapur Vs. The State of Punjab*, and *Smt. Sooraj Devi Vs. Pyare Lal and Another*,

9. However, as held by the Hon''ble Apex Court in *Manoj Sharma v. State* (supra), in my opinion afore-cited judgments cannot be read as a Euclid's formula, since it is well-settled that judgments of a Court cannot be read mechanically and like a Euclid's theorem. See *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, and *Bharat Petroleum Corporation Ltd. and Anr. v. N. R. Vairamani and another* AIR 2004 SC 4778. In rare and exceptional cases a departure can be made from the principle laid down in the decisions referred to in para 8 above, as observed by the Hon''ble Apex Court in *B.S. Joshi v. State of Haryana* (supra).

10. Section 320(9), Cr. P.C. was creating a lot of difficulty and hardship to the public and hence a way out was found by Hon''ble Apex Court in the case of *B. S. Joshi* (supra), in which it has been observed that the High Court u/s 482, Cr. P.C. can quash the criminal proceedings, if it comes to the conclusion that the interest of justice so requires, e.g., where there would almost be no chance of conviction. In a case u/s 498A, I.P.C., if the parties enter into a compromise, the chances of an ultimate conviction are bleak and hence, no useful purpose would be served by allowing the criminal proceedings to continue and they should, therefore, be quashed by exercising power u/s 482, Cr. P.C. in *B. S. Joshi's* case (supra), the Hon''ble Apex Court devised a creative solution to the problem and quashed the proceedings in exercise of its inherent power. The said decision was followed by Hon''ble Apex Court in *Nikhil Merchant Vs. Central Bureau of Investigation and Another*,

11. The following observations made by the Hon''ble Apex Court in *B. S. Joshi's* case (supra), in para 12 of the report are worth mentioning--

Marriage is a scared ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result

that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

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 hypertechnical 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 non-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.

12. In para 13 of the report in B. S. Joshi's case (supra), the Hon''ble Apex Court has held that the High Court in exercise of its inherent power 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. Therefore, in view of the afore-cited observations made by the Hon''ble Apex Court in B. S. Joshi's case (supra), with a view to do complete justice, this Court in exercise of its inherent power can quash the proceedings of aforesaid criminal case, because the parties have settled their dispute amicably out of the Court and they are living now peacefully after arriving at a settlement in the year 2006.

13. Consequently, the application u/s 482, Cr. P.C. is allowed. The proceeding of Criminal Case No. 7144 of 2005, State v. Prem Shankar Pandey and others Criminal Case No. 7144 of 2005, under Sections 498A and 323, I. P.C. and Section 3/4 of D. P. Act, arising out of Case Crime No. 136 of 2001. P. S. Maharajpur, District Kanpur Nagar, pending in the Court of Addl. Chief Metropolitan Magistrate-I, Kanpur Nagar, is hereby quashed.