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**(2010) 03 AHC CK 0194**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 29565 of 2009

Rajesh Kumar Yadav (Dr.)

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 25-03-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

**Citation :** (2010) 03 AHC CK 0194

**Hon'ble Judges :** Ravindra Singh, J

**Final Decision :** Allowed

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## **Judgement**

Ravindra Singh, J.—This application has been filed by the applicant Rajesh Kumar Yadav (Dr.) with a prayer to quash the proceedings of case No. 768 of 2009 arising out of chargesheet dated 27.3.2009 submitted in case crime No. 70 of 2007 under sections 498A, 323, 504, 506 IPC and section ? D.P. Act, P.S. Mahila Thana, District Allahabad, pending in the court of learned Judicial MagistrateI, Allahabad.

2. Heard Sri Alok Kumar Yadav, learned counsel for the applicant, learned A.G.A. for the State of U.P. and Sri Brijraj appearing on behalf of O.P. No. 2 Raj Bahadur Yadav.

3. It is contended by learned counsel for the applicant that in the present case the marriage of the applicant was solemnized with Smt. Anuradha, daughter of O.P. No. 2 Raj Bahadur Yadav, after marriage some disputes and differences had arisen between the husband and wife which resulted in lodging the FIR against the applicant and his family members. The FIR was lodged by Raj Bahadur Yadav against the applicant and his family members in case crime No. 70 of 2007 under sections 498A, 323, 504, 506 IPC and section ? D.P. Act, P.S. Mahila Thana, District Allahabad, the FIR dated 18.12.2007 lodged against the applicant and others was challenged by the applicant by way of filing criminal Misc. Writ

Petition No. 2461 of 2009 before this court, on that writ petition the matter was referred to Mediation and conciliation Centre of this court vide order dated 16.2.2009. The applicant and his wife Smt. Anuradha appeared before Mediation and conciliation Centre of this court where they voluntarily arrived an amicable solution resolving the above mentioned disputes and differences, they have voluntarily and on their own free will arrived at a settlement agreement on dated 7.6.2009. The settlement has been mentioned in para 6 of settlement agreement dated 7.6.2009. Paragraph 6 of settlement agreement is hereby quoted as under:

"6. The following settlement has been arrived at between the Parties hereto:

a. That Sri Rajesh Kumar Yadav S/o Sri Samala Prasad Yadav (Applicant No. 11 Husband) and Smt. Anuradha W/o Sri Rajesh Kumar Yadav D/o Sri Raj Bahadur Yadav (Daughter of O.P. No. 4 Wife) have agreed for divorce by mutual consent.

b. That the applicant has agreed to pay to the O.P. No. 2 Smt. Anuradha Rs. 4 lacs as full and final payment towards maintenance and permanent alimony by bank draft in favour of Smt. Anuradha.

c. That the applicant in pursuance of said agreed alimony amount has brought a Bank Draft No. 392730 of State Bank of India Akharpur Bhopal Branch dated 29.5.2009 of Rs. 2,40,000/ and Bank Draft No. 534474 of Rs. 1,50,000/ and Bank Draft No. 4477123 of Rs. 10,000/ in favour of Smt. Anuradha Yadav payable at Allahabad.

d. That the O.P. No. 2 Smt. Anuradha has received the aforesaid Bank Drafts today. She has no further claim whatsoever against the applicant No. 1 and his family members.

e. That the O.P. No. 2 has obtained an ex parte order in maintenance case No. 226 of 2008 Anuradha Yadav Vs. Rajesh Yadav passed by the Principal Judge, Family Court, Allahabad wherein the applicant was directed to pay Rs. 3,000/ per month to the O.P. No. 2 from the date of order i.e. 6.2.2009. However, the applicant no. 1 has paid Rs. 9,000/ in cash to day to the O.P. No. 2.

f. That both the parties agree that permanent alimony amount which has been accepted today shall include the maintenance amount awarded under order dated 6.2.2009 by the Family Court Allahabad and no further maintenance shall be payable by Sri Rajesh Kumar to his wife Smt. Anuradha.

g. That in view of the above noted conditions of this settlement, both the parties agree that this compromise shall be treated as their consent for mutual divorce and all the criminal and civil cases filed by the O.P. No. 2 shall be treated to withdrawn and the divorce decree to be pass for all practical purposes.

h. That O.P. No. 2 has also agreed that she will have no objection if the Hon''ble Court may allow the present writ petition No. 2461 of 2009.

4. In terms of the agreement the applicant paid the amount of Rs. 4 lacs to Smt. Anuradha, the daughter of O.P. No. 2 as full and final payment towards

maintenance and permanent alimony by Bank Draft No. 392730 dated 29.5.2009 of Rs. 2,40,000/ Bank Draft No. 534474 of Rs. 1,50,000/ and Bank Draft No. 4477123 of Rs. 10,000/. The O.P. No. 2 received the aforesaid bank drafts on 7.6.2009 and it was clearly mentioned in paragraph6(d) that Smt. Anuradha has no further claim whatsoever against the applicant and his family members. The applicant and his wife Smt. Anuradha have decided to live separately. It has been clearly mentioned in paragraph6(g) of settlement agreement that in view of the above noted conditions of the settlement both the parties agreed that this compromise shall be treated as their consent for mutual divorce and all the criminal and civil cases filed by O.P. No. 2 shall be treated as withdrawn and divorce decree to be passed for all practical purposes. But before the date of settlement agreement i.e. 7.6.2009 I.O. submitted the chargesheet dated 27.3.2009, the same has been filed by the applicant in the present case in light of the settlement agreement dated 7.6.2009, considering the same the applicant and his wife Smt. Anuradha were directed to be present personally before this court on 25.3.2010, both the parties are present in the court and Smt. Anuradha is having no objection in quashing the proceedings of above mentioned case because she has already settled her dispute with the applicant on 7.6.2009 before Mediation and conciliation centre of this court in view of B.S. Joshi and another Versus State of Hariyana and another (2003) (4) S.C.C. 675. The proceedings pending against the applicant and other coaccused persons may be quashed so that the applicant and his wife Smt. Anuradha may live freely according to their own free will.

5. In reply of the above contention, it is submitted by learned A.G.A. and learned counsel for O.P. No. 2 that Smt. Anuradha, the wife of the applicant is present in the court and she is having no objection in quashing the proceedings of this case because she has entered into compromise with the applicant and she has decided to live separately and she has accepted the bank drafts of Rs. 4 lacs in terms of agreement and she does not want to proceed further against the applicant.

6. In the present case applicant Rajesh Kumar Yadav (Dr.) and his wife Smt. Anuradha, daughter of O.P. No. 2 are present in the court. On quarry made by the court they have replied that they have entered into compromise, they have settled their dispute before the Mediation and conciliation center of this court on 7.6.2009. The applicant has paid the amount of Rs. 4 lacs and Smt. Anuradha accepted that she has received the aforesaid amount through bank drafts. She states that she does not want to proceed further against the applicant and other coaccused persons in this case. She is having no objection in quashing the proceedings pending against the applicant and other coaccused persons.

7. Considering the submissions made by learned counsel for the applicant, learned A.G.A., learned counsel appearing for O.P. no. 2 and from the perusal of the record it appears that the proceedings of this case have been initiated on account of matrimonial dispute between the applicant and his wife Smt. Anuradha, they have settled their dispute before the Mediation and Conciliation

Center of this court on 7.6.2009, they have decided to live separately. The terms and conditions of the settlement are clearly mentioned in paragraph 6 of settlement agreement. Smt. Anuradha, the daughter of O.P. No. 2 has accepted the amount of Rs. 4 lacs by way of bank drafts and they have agreed that criminal and civil proceedings pending between the parties shall be treated as withdrawn. The applicant and his wife Smt. Anuradha appear to be young, they have decided to live separately, in such circumstance the prosecution of the applicant and other coaccused persons shall not serve any purpose because the prosecution story shall not be supported by Smt. Anuradha and others. It shall be a futile exercise. The pendency of the proceedings may create some another problem in future to the applicant and Smt. Anuradha. To meet the ends of justice the proceedings pending against the applicant and other coaccused persons may be quashed in view of decision taken by Apex Court in case of B.S. Joshi and another Versus State of Hariyana and another (2003) (4) S.C.C. 675. The relevant part of the above mentioned case is reads as under:

9. The High Court has also relied upon the decision in case of Surendra Nath Mohanty case for the proposition that offence declared to be noncompoundable cannot be compounded at all even with the permission of the court. That is of course so. The offences which can be compounded are mentioned in Section 320. Those offences which are not mentioned therein cannot be permitted to be compounded. In Mohanty case the appellants were convicted by the trial court for offence under section 307. The High Court altered the conviction of the appellants and convicted them for offence under Section 326 and imposed sentence of six months. The trial court had sentenced the appellants for a period of five years" RI. The application for compounding was, however, dismissed by the High Court. This Court holding that the offence for which the appellants had been convicted was noncompoundable and, therefore, it could not be permitted to be compounded but considering that the parties had settled their dispute outside the court, the sentence was reduced to the period already undergone. It is, however, to be borne in mind that in the present case the appellants had not sought compounding of the offences. They had approached the Court seeking quashing of FIR under the circumstances abovestated.

10. In State of Karnataka Vs. L. Muniswamy considering the scope of inherent power of quashing under section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provisions which seeks to save the inherent powers of the High Court to do justice between the State and its

subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non compoundable offences? The answer clearly has to be in the "negative" It would, however, be a different matter if the High Court on fact declines the prayer for quashing for any valid reasons including lack of bonafides.

11. In *Madhavao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre* it was held that while exercising inherent power of quashing under section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the court, changes of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

12. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different contest, in *G.V. Rao Vs. L.H.V. Prasad* are very apt for determining the approach required to be kept in view in a matrimonial dispute by the courts. It was said that there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred 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" case" in different courts.

8. The view taken by the Hon"ble Supreme Court in the above mentioned case, is applicable in this case also. Therefore, to meet the ends of justice the proceedings of criminal case No. 768 of 2009 under sections 498A 323, 504, 506 IPC read with section ? of the D.P. Act P.S. Mahila Thana, district Allahabad pending in the court of learned Judicial MagistrateI Allahabad arising out of the chargesheet submitted in case crime No. 70 of 2007 P.S. Mahila Thana, District Allahabad are hereby quashed.

Accordingly this application is allowed.