
(2004) 04 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal M.M.O. No. 39 of 2004

Rajinder Singh and Others

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 2 ShimLC 5

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Sanjeev Kuthiala, for the Appellant; H.K.S. Thakur, Dy. A.G. for Respondent No.1 and Vivek Singh, for the Respondent

Final Decision : Allowed

Judgement

1. This petition u/s 482 of the Code of Criminal Procedure (hereafter referred to as "the Code") read with Article 227 of the Constitution of India has been preferred by the Petitioners/accused (hereafter referred to as "the Petitioners") for issuance of an appropriate writ/order or direction quashing the proceedings in case No. 195-1/3, titled State of H.P. v. Rajinder Singh and Ors. under Sections 498A, 34, 506 and 323 of the Indian Penal Code, pending in the Court of the learned Additional Chief Judicial Magistrate, Amb, or in the alternative to compound the case as per the compromise entered into between the Petitioners and complainant Respondent No. 2 (hereafter referred to as "R-2").

2. The undisputed facts leading to the presentation of the present petition are that R-2 lodged FIR Annexure P-1 under Sections 498A, 34, 506 and 323 of the Indian Penal Code on 16.7.2003 at Police Station, Gagret. On investigation the Petitioners were found to have committed the aforesaid offences against R-2, therefore, a charge-sheet was forwarded to the concerned Court by the police and at present the case is pending disposal in the Court of the learned Additional Chief Judicial Magistrate, Amb.

3. The present petition has been filed on the grounds that by virtue of a written compromise Annexure P-2, the Petitioners and Respondent No. 2 have compromised/settled their differences and thereafter Petitioner Rajinder Singh and R-2 are desirous of living together with their daughters and Petitioners No. 2 and 3, who are aged parents of Petitioner No. 1, are also desirous of ensuring that the family lives together in an affectionate atmosphere which is even in the interest of the two daughters born out of the wedlock of Petitioner No. 1 and R-2.

4. I have heard the learned Counsel for the Petitioners, the learned Deputy Advocate General for the Respondent State and the learned Counsel for R-2 and have also gone through the material placed on record.

5. It may be pointed out here that one of the offences alleged to have been committed by the Petitioners is u/s 498A of the Indian Penal Code which is not compoundable and the Court has no power to allow composition of such offence. Therefore, the alternative prayer in the petition that the offences may be compounded as per the compromise between the parties, being contrary to the letter and spirit of the law, cannot be granted.

6. It may, however, be pointed out that the very purpose of the law, particularly the penal laws, is to ensure peace and harmony in the society and deter people from causing harm to the person and property of others. The law takes care of ensuring peace and harmony in a family, the smallest social unit, by making adequate provisions under various enactments like Hindu Marriage Act, CPC etc. The legislative policy and the judicial pronouncements in case of any discord or dispute between families, are in favour of the Courts leaning in favour of bringing about the cordial and harmonious relations and peace to the family rather than to perpetuate them on technicalities.

7. As already stated here-in-above, an offence u/s 498A of the Indian Penal Code is not compoundable within the framework of the Code and, therefore, the Court has no power and authority to grant permission to compound an offence which is not compoundable. However, Section 482 of the Code preserves the inherent powers of the High Court which give widest powers to such Court to undo such injustice which cannot be undone under any other provisions of the Code. These powers can be exercised to give effect to any order under the Code or to prevent abuse of process of the Court or to secure ends of justice. Exercise of such powers with a view to achieve the aforesaid objective is independent of the powers of the Court u/s 320 of the Code. Thus, the powers of the High Court to quash the proceedings u/s 482 of the Code stand entirely on different footings and the provisions of Section 320 of the Code in no way affects such powers. If the Court is of the view that the ends of justice can be secured by quashing the FIR regarding commission of any non-compoundable offence, Section 320 of the Code would not be a bar to the exercise of inherent powers of quashing the FIR.

8. In B.S. Joshi and Others Vs. State of Haryana and Another, the Hon'ble Apex Court, while dealing with a similar question as in hand, held as under:

8. It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extra-ordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

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

14. There is no doubt that the object of introducing Chapter XX-A 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 non exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. This 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 FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code.

9. In *Sushma Devi and Ors. v. State of H.P.* (Cr.M.M.O. No. 83 of 2003, decided on 21.10.2003) this Court has also taken the view that the powers of the High Court u/s 482 of the Code are not in any manner controlled by Section 320 of the Code and the inherent powers can be exercised in the larger interest of fair play and social justice.

10. Similar view has been taken in *Haji Nihal Ahmad and Others Vs. State of U.P. and Another*, and *Gurcharan Singh Vs. State*,

11. The settlement of the dispute between the parties as in Annexure P-2 which is admitted by the parties, is in the best interest of the Petitioners and R-2 and above all, in the interest and welfare of the minor daughters of Petitioner No. 1 and R-2.

12. In view of the factual aspects of the case and the legal position as discussed herein-above, the present petition deserves to be allowed.

13. As a result, this petition is allowed and the proceedings in Criminal Case No. 195-1/3, under Sections 498A, 34, 506 and 323 of the Indian Penal Code, pending in the Court of the learned Additional Chief Judicial Magistrate, Amb, are quashed.