

(2014) 11 AHC CK 0144

In the Allahabad High Court

Case No : Crl. M. Application No. 28743 of 2007

Rakesh Kumar and Others

APPELLANT

Vs

State of U. P. and Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 125, 156(3), 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13, 13B
Penal Code, 1860 (IPC) — Section 323, 406, 494, 498A, 506

Citation : (2015) 1 ACR 175 : (2015) 88 ALLCC 492

Hon'ble Judges : Shashi Kant, J

Bench : Single Bench

Advocate : Raghavendra Dwivedi, Rajneesh Tiwari and C.P. Gupta, Advocates for the Appellant; Anil Kumar Shukla, Advocates for the Respondent

Judgement

Shashi Kant, J.—Heard Sri C.P. Gupta holding brief of Sri Raghavendra Dwivedi learned counsel for the applicants and the learned A.G.A. for the State of U.P. This petition has been filed by the applicants for quashing the order dated 4.7.2007 passed by the A.C.J. (J.D.), Room No. 10, Allahabad in Criminal Case No. 2733 of 2007, Renu v. Rakesh Gautam and others, under Section 498A, I.P.C. and Section 3/4, D.P. Act and to quash the entire proceedings arising out thereof.

2. On 12.12.2007, following order has been passed:

"Heard Sri Raghavendra Dwivedi, learned counsel for the applicants and the learned A.G.A. and also perused the record.

It is said that opposite party No. 2 brought a suit for divorce under Section 13 of the Hindu Marriage Act with the allegation that her husband Sri Rakesh Kumar to be impotent. With the counter allegations a separate divorce proceedings was brought by applicant No. 1 but thereafter with a view to harass the applicants an

application was given to the Circle Officer on 30th May, 2006 wherein the police after investigation submitted that no such offence has been made. Thereafter an application under Section 156(3) of the Code of Criminal Proceedings was moved by opposite party No. 2 and that too was found to be not correct and the police submitted final report in it. It was subsequently treated as complaint case and evidence was recorded and summons were issued against the applicants. It is said all to be mala fide proceedings.

Issue notice to opposite party No. 2. Let counter-affidavit be filed within four weeks. List it on 25th January, 2008. Till that date, the proceedings of Criminal Case No. 2733 of 2007, Renu v. Rakesh Gautam and others, pending in the court of the learned Additional Civil Judge (Junior Division), Room No. 10, Allahabad shall remain stayed."

3. Keeping view of the above facts that the above Criminal Case No. 2733 of 2007 has been filed due to matrimonial dispute between the parties. Vide order dated 24.10.2008, the matter was referred to the mediation Centre at Allahabad High Court. The Mediation and Conciliation Centre of this Court has made available his report dated 5.8.2010, in which it has been informed that mediation has completed. Agreement enclosed.

4. Paragraphs 6 and 7 of the agreement enclosed with report are reproduced herein below:

"6. That it has been mutually and amicably agreed between the parties that they will live apart/separately on the following terms and conditions:

(a) That the petitioner No. 1 Sri Rakesh Kumar has agreed to give Rs. 1,75,000 (Rs. one lac seventy five thousand only) to O.P. No. 2 as hereinafter mentioned - 75,000 has already been given to O.P. No. 2 on 3.6.2010 vide Bank Draft No. 873461 dated 20.5.2010, Rs. 50,000 is being given today (5.8.2010) vide Bank Draft No. 877871 dated 4.8.2010 and Rs. 50,000 will be given to O.P. No. 2 on 22.1.2011, before the Principal Judge Family Court Allahabad prior to granting of divorce decree to the parties.

(b) That on 22.1.2011 the O.P. No. 2 will receive the entire amount agreed between the parties as full and final amount paid as alimony to the O.P. No. 2 against the present matrimonial dispute.

(c) That it is further mutually agreed between the parties that they will withdraw cases filed/pending between the parties on the basis of the present settlement agreement which are herein mentioned:-

(i) Case No. 171/2006, Rakesh Kumar v. Renu Devi, under Section 13 of Hindu Marriage Act, pending before Principal Judge, Family Court Allahabad.

(ii) N.C.R. No. - 107/2009 Case No. 2931/2009 under Section 494, I.P.C. P.S. Karchhana, pending before A.C.J.M., Allahabad Room No. 4, Renu v. Rakesh and Khushboo.

(iii) Case No. 2733/2009, under Sections 498A and 3/4, D.P. Act pending before A.C.J.M., Allahabad Room No. 10.

(iv) Case No. 554/06, Smt. Renu v. Rakesh Gautam, under Section 125, Cr.P.C. pending before Principal Judge, Family Court, Allahabad.

(d) That in the pursuance of the present settlement agreement mutually agreed between the parties any other cases/disputes regarding the present matrimonial matter will come to an end and the parties have mutually agreed not to initiate/file any case in future regarding the present matrimonial matter.

(e) That the parties have already filed a divorce case under Section 13B of Hindu Marriage Act bearing Case No. 784 of 2010 on 21.7.2010 and the date fixed for granting divorce decree is 22.1.2011.

(f) That on 22.1.2011 both the parties will appear before Principal Judge, Family Court, Allahabad and after receiving the amount of Rs. 50,000 in the form of Bank Draft in the name of O.P. No. 2 Smt. Renu. The O.P. No. 2 will sign the documents and Principal Judge, Family Court will finally decide the marriage Case No. 784 of 2010. Thus, granting divorce decree to both the parties.

7. By signing this agreement the parties hereto state that they have no further claims of demands against each other with respect to CrI. Misc. Application No. 28743 of 2007 and all disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation."

5. Learned counsel for the applicants submits that as above criminal case has been filed due to matrimonial dispute between the parties and now parties have entered into compromise as has been described in the report of Allahabad Mediation and Conciliation Centre dated 5.8.2010. Therefore, sinabung order dated 4.7.2007 passed by above mentioned court and the entire proceeding of the above Complaint Case No. 2733 of 2009 under Section 498A, I.P.C. and Section 3/4, D.P. Act and entire proceedings arising out thereof, be quashed in the interest of justice.

6. Learned A.G.A. has opposed the above submissions made on behalf of applicants by submitting that the offence under Section 498A, I.P.C. is non-compoundable under Section 320, Cr.P.C. and complaint under Section 498A may not be quashed in exercise of inherent power conferred under Section 482, Cr.P.C.

7. I have considered the rival arguments raised by learned counsel of the parties and gone through record.

8. Despite service of notice, no any counter-affidavit has been filed on behalf of opposite party No. 2, Smt. Renu Devi. In the cause list, the name of Sri Anil Kumar Shukla was printed as counsel for respondent No. 2 but non-appears on behalf of opposite party No. 2 even when the case was taken up in the revised list.

9. These facts are not challenged before me that proceedings of complaint Case

No. 2733 of 2014, Renu v. Rakesh Gautam and others, under Sections 498A, I.P.C. and 3/4, D.P. Act are in the result of matrimonial discord between the parties and the parties have entered into compromise before the mediation centre and in the compromise, they have showed their willingness to settled all their disputes amicably through the process of conciliation/mediation.

10. In the above mentioned factual background, the scope of the inherent power conferred under Section 482, Cr.P.C. for quashing of proceedings of complaint case under Section 498A, I.P.C. and Section 3/4, D.P. Act, have to be examined in this case.

11. In the following case, while dealing with quashing of criminal matters arising out from matrimonial disputes, various High Courts have quashed the proceedings under Section 498A, I.P.C. in exercise of the inherent power conferred under Section 482, Cr.P.C.:

1. Andhra Pradesh High Court in the case of Thathapadi Venkatalakshmi Vs. State of Andhra Pradesh and Another, .

2. Rajasthan High Court in the case of Chiman Singh and Others Vs. State of Rajasthan, .

3. Gujarat High Court in the case of State of Gujarat Vs. Ahmadhusen Mahmad Khalil Ansari, .

4. Andhra Pradesh High Court in the case of Daggupati Jayalakshmi Vs. The State, .

5. Orissa High Court in the case of 2006 Cri LJ (NOC) 75 (Ori) : (2006) 1 Ori LR 47.

12. While dealing with quashing of criminal matters arising out from matrimonial disputes under Section 498A, 323, 506, I.P.C. and 3/4, D.P. Act in the case of application under Section 482 No. 2439 of 2013, Umesh alias Babloo and others v. State of U.P., decided on 6.2.2013, this Court has held as under:

"....Since both the parties have amicably compromised the matter, no useful purpose would be served by continuing the criminal proceedings.

The Apex Court in the case of B.S. Joshi and Others Vs. State of Haryana and Another, , it is held that High Court is empowered to quash criminal proceedings of F.I.R. or complaint in exercise of its inherent powers, in case the parties have arrived at settlement agreement of their disputes, and Section 320, Cr.P.C. does not limit or affect the power under Section 482, Cr.P.C. The aforesaid case has also been relied in the case of Ruchi Agarwal Vs. Amit Kumar Agrawal and Others, , where the Apex Court quashed the proceedings of Criminal case under Sections 498A, 323 and 506, I.P.C. read with Section 3/4 S.D.P. Act as the parties have entered into a compromise. This Court in exercise of its inherent powers under Section 482, Cr.P.C. can quash the proceedings where the parties have entered into compromise.

The Apex Court in the case of Madan Mohan Abbot Vs. State of Punjab, , emphasised in para 6 as follows:

"We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

Taking into account the allegations and the fact that the compromise has been arrived at between the parties, there is no impediment in the way of this Court to quash the proceedings arising out of the aforementioned case in view of the above said settled proposition of law.

Accordingly, the present application is allowed and the entire criminal proceedings pending in the court of Additional Chief Judicial Magistrate IInd, District Ghaziabad, State v. Umesh alias Babloo and others, Case Crime No. 827 of 2008, Case No. 1214 of 2009, under Sections 498A, 323, 506, I.P.C. and 3/4, D.P. Act, Police Station Vijay Nagar, District Ghaziabad are hereby quashed."

13. A Bench of Apex Court having strength of three Judges including the then Chief Justice of India while dealing with scope to Section 482, Cr.P.C. in Criminal Appeal No. 447 of 2013 in its judgment dated 15.3.2013, held in paras 7 and 11 to 14 as follows:

"7. It is not in dispute that matrimonial disputes have been on considerable increase in recent times resulting in filing of complaints under Sections 498A and 406 of I.P.C. not only against the husband but also against the relatives of the husband. The question is when such matters are resolved either by the wife agreeing to rejoin the matrimonial home or by mutual settlement of other pending disputes for which both the sides approached the High Court and jointly prayed for quashing of the criminal proceedings or the F.I.R. or complaint by the wife under Sections 498A and 406 of I.P.C., whether the prayer can be declined on the sole ground that since the offences are non-compoundable under Section 320 of the Code, it would be impermissible for the court to quash the criminal proceedings or F.I.R. or complaint.

11. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In B.S. Joshi (supra), this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

12. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of F.I.R., complaint or the subsequent criminal proceedings.

13. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

14. In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or F.I.R. or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code."

14. In view of the above factual background, settled legal position and with a view to brought peace and harmony between the parties and in the interest of justice I find it desirable to quash the order dated 4.7.2007 passed by above mentioned court and the entire proceeding of the above Complaint Case No. 2733 of 2009 under Section 498A, I.P.C. and Section 3/4, D.P. Act. Accordingly, the application under Section 482, Cr.P.C. is allowed and the order dated 4.7.2007 passed by A.C.J. (J.D.), Room No. 10, Allahabad and the entire proceedings of the aforesaid Complaint Case No. 2733 of 2009 under Section 498A, I.P.C. and Section 3/4, D.P. Act, are hereby quashed.