
(2011) 03 AHC CK 0043

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2280 of 2010

Ram Niwas Awasthi and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 147, 148, 320, 323, 427

Citation : (2011) 3 ACR 3028

Hon'ble Judges : V.K. Dixit, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Dixit, J.—In compliance of the order dated 9.2.2001, passed by this Court, petitioner No. 2 Smt. Alka Awasthi and opposite party No. 2 Saurabh Misra are present in person before this Court.

2. Heard Sri Y. K. Sharma. Learned Counsel for the petitioner, Sri Saurabh Misra, in person-opposite party No. 2 and the learned Additional Government Advocate for the State.

3. By the instant petition u/s 482, Cr. P.C. the petitioners have prayed for quashing the entire proceeding in the Case No. 2821 of 2007 relating to Case Crime No. 98(A)/2002, under Sections 147, 148, 323, 504, 506 and 427, I.P.C. of Police Station Kaisarbagh district Lucknow pending before the learned Special Chief Judicial Magistrate (Custom), Lucknow.

4. Learned Counsel for the petitioners submitted that there was a matrimonial dispute between the parties and because of that an F.I.R. of the aforesaid criminal case has been lodged by the opposite party No. 2 against the petitioners.

5. Submission of the Learned Counsel for the petitioner No. 2 and opposite party No. 2 is that they have entered into an agreement which was duly executed

between them on 21.8.2007 in which they agreed for a consent decree for dissolution of marriage and closing all the criminal or civil proceedings by moving relevant applications in the proceedings for that purpose. The settlement/agreement entered into on 21.8.2007 between petitioner No. 2-Smt. Alka Awasthi (wife) and opposite party No. 2-Saurabh Misra (husband) is placed on record. Petitioner No. 2 Smt. Alka Awasthi (wife) is identified by Learned Counsel for the petitioners and opposite party No. 2 Saurabh Misra, advocate in person (husband) appeared before this Court and confirmed that they have voluntarily and of their own free-will arrived at this settlement/agreement. It was settled between the parties that petitioner No. 2-Smt. Alka Awasthi does not want to proceed any legal action against her husband opposite party No. 2- Saurabh Misra and others family members in future. The opposite party No. 2--Saurabh Misra affirmed before this Court that he does not want to proceed with the aforesaid criminal case pending in the court of learned Chief Judicial Magistrate, district Bahraich. The petitioner No. 2 and the opposite party No. 2 also stated that they have dissolved their marriage by mutual consent and accordingly petitioner No. 2 and opposite party No. 2 filed a joint petition u/s 13B of Hindu Marriage Act in the court of learned Civil Judge (Senior Division), Baharaich, which was registered as Regular Suit No. 468 of 2007 and learned Civil Judge (Senior Division), Bahraich was pleased to pass order dated 29.1.2009 allowing the joint petition and dissolving the marriage of petitioner No. 2 and opposite party No. 2.

6. Learned Counsel for both the parties submitted that since some of the sections in the aforesaid criminal case are non-compoundable and due to this legal hurdle they could not file a formal compromise before the court below. Therefore, u/s 482, Cr. P.C. the petitioners have prayed for quashing the entire charge-sheet No. 251 of 2002 dated 17.9.2002 in Case No. 2821 of 2007 relating to Case Crime No. 98 (A) /2002, under Sections 147, 148, 323, 504, 506 and 427. I.P.C. of Police Station Kaisarbagh district Lucknow pending before the learned Special Chief Judicial Magistrate (Custom), Lucknow as well as order dated 12.4.2010, passed by the learned Special Chief Judicial Magistrate (Custom), Lucknow.

7. Learned Counsel for the parties placed reliance on the judgment of the Hon''ble Apex Court rendered in the case of B.S. Joshi and Others Vs. State of Haryana and Another, and Nikhil Merchant Vs. Central Bureau of Investigation and Another,

In the case of B.S. Joshi and others (supra) the Hon''ble Apex Court propounded the law that the High Court in exercise of its inherent powers 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, Cr. P.C.

The provision of Section 482, Cr. P.C. is reproduced as under :

The High Court has the widest jurisdiction to pass orders to secure the ends of justice and, therefore, if the High Court feels that ends of justice require that an

order should be made in an application then the High Court will entertain the application is not contemplated by the Court.

The words "Nothing in this Code" used in Section 482, Cr. P.C. is non-obstante clause, and given it overriding effect over other provisions in the Cr. P.C.

8. The inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. The inherent power is wide in nature and such power is to be exercised with great restraint. Wider would be the power, greater should be the restraint.

9. The provision of Section 482, Cr. P.C. was enacted to emphasize the fact that the High Court has the widest jurisdiction to pass orders to secure the ends of justice and, therefore, if the High Court feels that ends of justice require that an order should be made in an application then High Court will entertain the application and made the necessary orders to secure the interest of justice.

Considering the facts and circumstances of this case and the law propounded by Hon"ble the Apex Court in the case of B. S. Joshi and others (supra), it is a fit case where technicality should not be allowed to stand in the way of quashing of criminal proceedings, since the parties have decided that all the proceedings should come to an end so that the parties may shelve their disputes and lead a peaceful life, the continuance of the same after the compromise arrived at between the parties would be a futile exercise and where the inherent power of this Court u/s 482, Cr. P.C. is required to be invoked for the purpose of securing the ends of justice.

10. Consequently, the petition u/s 482. Cr. P.C. is allowed and entire proceedings in the Case No. 2821 of 2007 relating to Case Crime No. 98(A)/2002, under Sections 147, 148, 323. 504. 506 and 427. I.P.C. titled and Ram Niwas and Others v. State of U.P. and Another, of Police Station Kaisarbagh district Lucknow pending before the court of Special Chief Judicial Magistrate (Custom). Lucknow are hereby quashed.