

(2009) 08 OHC CK 0008
In the Orissa High Court
Case No : Criminal M.C. No. 275 of 2007

Sanatan Mallik and Others	Vs	APPELLANT
State of Orissa and Another		RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 4, 6
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 34, 406, 494, 498A

Citation : (2009) 44 OCR 713 : (2009) 2 OLR 323 Supp

Hon'ble Judges : B.P. Ray, J

Bench : Single Bench

Advocate : A. Mishra and Associates, for the Appellant; Additional Government Advocate for O.P. 1 and S. Jena for O.P. 2, for the Respondent

Final Decision : Allowed

Judgement

B.P. Ray, J.—This an application u/s 482 of the Code of Criminal Procedure (in short, "Code of Criminal Procedure ") filed by the Petitioners with a prayer to quash the criminal proceeding in G.R. Case No. 708 of 1995 pending in the court of learned S.D.J.M., Jajpur wherein offences under Sections 498-A/406/494/34 of the Indian Penal Code (in short, "I.P.C") and Sections 4 & 6 of the Dowry Prohibition Act (in short "D.P. Act") have been alleged against the Petitioners, in view of the compromise of the matter between the informant-victim and the Petitioners:accused persons.

2. The facts relevant for disposal of the Crl. M.C. are as follows:

The opp. party No. 2-Mitu Mallik was given in marriage on 14.4.1992 to the Petitioner No. 2-Niranjam Mallik. But subsequently the opp. party No. 2 lodged a report before the Police at Binjharpur Police Station, alleging that she was meted with cruelty by the Petitioners, husband and in-laws members for non-fulfillment of their demand of dowry. Pursuant to which Binjharpur P.S. Case No. 106 of

1995 was registered against the Petitioners for alleged commission of offences under Sections 498-A, 34 I.P.C. & Section 4 of D.P. Act. On completion of investigation, the Police, however, submitted charge sheet against the Petitioners for alleged commission of offences punishable under Sections 498-A/406/494 read Section 34 of I.P.C. and Sections 4 & 6 of D.P. Act. Cognizance for the said offences was taken and processes were issued against the accused persons. In the meanwhile, the Petitioner No. 2-husband along with opp. party No. 2-wife have filed a joint petition u/s 13B of the Hindu Marriage Act seeking a decree of divorce, declaring the marriage to have been dissolved, which has since been registered as C.P. No. 159 of 1997 before the Judge, Family Court, Cuttack. By order dated 27.6.1997, learned Judge, Family Court Cuttack has dissolved the said marriage by a decree of divorce.

3. In this proceeding, the opp. party No. 2 being noticed has made her appearance and filed an affidavit that she has already received her permanent alimony from Petitioner No. 2 as per the order passed by the learned Judge, Family Court, Cuttack and the marriage has since been dissolved. She has also stated in the said affidavit that due to misunderstanding with the Petitioner No. 2-husband and in-laws members, the criminal case in question has been initiated by her and now the matter having been settled between them outside the Court with the intervention of the gentries, she is not interested to proceed with the criminal case. From the affidavit, it appears that the settlement arrived at between the parties appears to be genuine one.

4. Learned Counsel for the Petitioners submits that even though, in this case, offences alleged are non-compoundable in nature, but the dispute having arisen out of matrimonial discord and the marriage having been dissolved on a mutual petition filed u/s 13-B of the Hindu Marriage Act and the wife having filed an affidavit that she does not want to proceed with the case which has arisen out of a misunderstanding between the parties, the same deserves to be quashed, in view of the law laid down by the apex Court in the case of B.S. Joshi and Ors. v. State of Haryana and Anr. reported in (2003) 25 OCR (SC) 99. Learned Counsel appearing for opp. party No. 2 has also no objection for the same. In the case of B.S. Joshi (supra), their Lordships of the apex Court have held that even though the Offences alleged in a case are non-compoundable in nature, but the same does not fetter the inherent power of the High Court to quash a criminal proceeding, if the same is necessary for the purpose of securing ends of justice. Therein, it has been held that where the chance of conviction is bleak, the High Court can proceed to quash the proceeding taking into consideration the special fact and circumstances of the case. Holding the aforesaid proposition, the apex Court in the reported case, quashed the proceeding under Sections 498A and 406, I.P.C. though the same are not compoundable in nature u/s 320, Code of Criminal Procedure

5. The present case in hand is also an off shoot of a matrimonial dispute, wherein the marriage has since been dissolved between the parties and the wife

has come forward with an affidavit that the dispute has already been settled between them out side the Court and she does not want to proceed with the case. The same appears to be bona fide. In the above premises, the chance of conviction in this case is also bleak.

6. Hence, no useful purpose is going to be served in continuance of proceeding in the court of learned S.D.J.M., Jajpur. I, therefore, allow the prayer made in the present CRLMC and consequently quash the proceeding in G.R. Case No. 708 of 1995 pending before the learned S.D.J.M., Jajpur.