

(2018) 10 DEL CK 0596

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2667 Of 2016 & Criminal Miscellaneous Appeal 2748 Of 2018

Sandeep Sinha & Anr

APPELLANT

Vs

State Of Nct, Delhi & Ors

RESPONDENT

Date of Decision : 04-10-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code of Criminal Procedure, 1973 — Section 173, 482
Indian Penal Code, 1860 — Section 406
Dowry Prohibition Act, 1961 — Section 4

Citation : (2018) 10 DEL CK 0596

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Ashutosh Bhattacharjee, Ashish Dutta, Mukul Dhawan

Final Decision : Disposed Off

Judgement

1. The marriage of the third respondent with the first petitioner was agreed upon sometime in July, 2011, a formal engagement ceremony having been held on 03.07.2011, the marriage having been fixed to be held on 19.02.2012. Some disputes arose including on account of allegation of illicit demand for dowry and against such backdrop first information report (FIR) no. 92/2013 was lodged with the Crime Against Women Cell on 13.06.2013 by the second respondent, he being the father of the third respondent, the investigation having been taken up into offences allegedly committed under Section 406 of the Indian Penal Code, 1860 (IPC) and Section 4 of the Dowry Prohibition Act, 1961 by the petitioners, the second being the mother of the first petitioner. On conclusion of investigation, police filed report under Section 173 of Cr.P.C. on which cognizance is stated to have been taken, the

matter being pending on the file of the Metropolitan Magistrate.

2. The parties were referred to Delhi High Court Mediation and Conciliation Centre where they entered into a settlement agreement dated

17.01.2018. In terms of the said agreement, both sides have agreed to bury the hatchet, including by approaching this court for quashing of the

aforementioned FIR, the first petitioner having agreed to pay to the second respondent a total amount of Rs.1,50,000/- as full and final settlement of all

his claims as also those of the third respondent, this in the form of two instalments, first payable on 22.01.2018 and the second on or before

15.02.2018. The third respondent has since got married elsewhere and she has authorised her father i.e. the second respondent to enter into the said

settlement and also to receive the settlement amount. Under instructions of the court, the Station House Officer of the concerned police station has

verified the letter of authority and a confirmatory report in this regard has come on record on 12.09.2018.

3. The petitioners today tender to the second respondent who is present in person with counsel on his own behalf and also on behalf of the third

respondent, two demand drafts, they bearing nos.501150 dated 05.05.2018 and no.501151 dated 18.01.2018 (both revalidated from time to time lastly

on 04.09.2018), drawn in favour of the second respondent on ICICI Bank, each in the sum of Rs.75,000/-. The second respondent has handed over an

acknowledgement of receipt of the said demand drafts and submits no objection to the prayer for quashing.

4. Offence under Section 4 of the Dowry Prohibition Act is not compoundable. The parties are constrained to move this court for quashing on the

basis of amicable resolution arrived at by them in the facts and circumstances noted above.

5. The scope and ambit of the power conferred on this court by Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Articles 226

and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings, was examined by the Supreme Court in B.S.

Joshi and Ors. Vs. State of Haryana and Anr., (2003) 4 SCC 675, against the backdrop of a catena of earlier decisions. Noting, with reference to the

decision in State of Karnataka Vs. L Muniswamy, (1977) 2 SCC 699, that in exercise of this â??inherentâ? and â??wholesome powerâ?, the

touchstone is as to whether “the ends of justice so require”, and it was observed thus :

“10. ... 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. ...that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision 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.”

(emphasis supplied)

6. The Supreme Court in B.S. Joshi (supra) further noted as under :-

“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 facts declines the prayer for quashing for any valid reasons including lack of bona fides.”

(emphasis supplied)

7. Holding that “special features in ...matrimonial matters are evident” and that it is “the duty of the court to encourage genuine settlements of matrimonial disputes”, referring to *Madhavrao Jiwajirao Scindia Vs.*

Sambhajirao Chandrojirao Angre, (1988) 1 SCC 69,2 it was further observed that :

“11. ... Where, in the opinion of the court, chances 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.”

(emphasis supplied)

8. In *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303, the Supreme Court contrasted the request for quashing of criminal proceedings on the basis of settlement with the possibility of compounding of an offence and observed thus :-

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as

compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under

Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding

of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby

while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is

guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be

acquittal or dismissal of indictment.”

(emphasis supplied)

9. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be

further illustrated by the decision of a bench of three Hon’ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita*

Raghuvanshi and Anr., (2013) 4 SCC 58, the following observations summarising the philosophy succinctly :-

“15. 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 FIR, complaint or the subsequent criminal proceedings.

16. 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 their 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 process of court or that the ends of justice require that the proceedings ought to be quashed...â??

(emphasis supplied)

10. In a case where criminal proceedings arise essentially out of matrimonial dispute and the parties have decided to bury the hatchet, the court must examine if there is any likelihood of the criminal prosecution resulting in conviction. In fact-situation wherein the matrimonial relation has been brought to an end by mutual consent and the parties are eager to move on with their respective lives seeking closure and if there is nothing to indicate lack of bonafide on the part of any side, denial of the prayer for quashing the criminal case would restore acrimony rather than bring about peace. Allowing continuance of the criminal action would be fruitless and clearly an abuse of judicial process.

11. The case at hand passes the muster of the above-noted tests.

12. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR No. 92/2013 of police station Crime

Against Women Cell, under Section 406 IPC and Section 4 of Dowry Prohibition Act, 1961 and the proceedings emanating therefrom are hereby quashed.

13. The petition and the application filed therewith are disposed of accordingly.
Dasti to both sides.