

(2006) 11 DEL CK 0114

In the Delhi High Court

Case No : Criminal M.C. No"s. 3359-3363 of 2006

Satnam Kaur and Others (Smt.)

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 482

Penal Code, 1860 (IPC) — Section 323, 328, 34, 354, 376

Citation : (2007) 1 DMC 241

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Amit Kumar Poddar, for the Appellant; Sunil Sharma, learned APP, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—This is a joint petition filed by the complainant as well as accused persons for quashing of proceedings arising out of the FIR No. 281/2004 under Sections 498A/323/354/328/376/34, IPC registered at Police Station Kanjhawala, New Delhi. The petitioner No. 1 is the complainant, petitioner No. 2 is her husband, petitioner No. 3 is father in law, petitioner No. 4 is mother in law and petitioner No. 5 is brother in law of the petitioner No. 1. The marriage between the petitioner No. 1 and petitioner No. 2 was solemnized on 1.11.2004 as per Hindu (Sikh) rights and customs at Delhi.

2. The FIR is lodged on 3.11.2004 (two days after the marriage) and is based on alleged occurrence which took place on 2.11.2004. It is clear that as per the allegations in the FIR, on the very next date after the marriage, the alleged occurrence took place which forced the petitioner No. 1 to lodge the complaint. It would, Therefore, be appropriate to reproduce here the relevant portion of the said complaint for better understanding of the nature of allegations made by the petitioner No. 1:

On 2.11.2004, yesterday, around 10 p.m. at night my husband Surender Singh, brother in law Raju, mother in law Satwant Kaur and father in law Darshan Singh misbehaved with me. My mother in law and father in law caught hold of me, my brother in law held my breast and my husband started beating me and started saying that you have not brought any thing as a dowry. I told them that before marriage my parents had told that they were unable to give dowry because my parents are poor. My in laws are greedy. Regarding this I wanted to make a phone call to my parents but my in laws prevented me and after quarrelling on this issue my husband made me drink milk and after drinking the milk I fell down on the ground. Thereafter, my husband gave me beatings holding my face. In consequence of this, I received internal injuries. Today on 3.11.2004, in the morning, my mother in law made a telephone call to my parents saying that they could take their girl to their house. Immediately, thereafter, my parents reached my in laws house and my in laws started beating me in front of my parents. Thereafter, my parents brought me to their home from my in laws house. In my marriage, my parents gave the dowry to the best of their capacity. I called up 100 number, PCR Van came and took me to SGM Hospital, Mangolpuri, Delhi where my treatment is going on. You have written my statement in the hospital. Action be taken against my husband, brother in law, mother in law and father in law. Statement heard which is correct. Sd./- English attested.

3. On this FIR, it is recorded by the IO that after receiving the information, he reached SGM Hospital, Mangolpuri, Delhi, where he was given MLC of the complainant dated 3.11.2004 on which it was written by the Doctor "alleged history of assault and sexual assault" "alleged H/O injection of some poison as told by patient and further the result was assault - O/R".

4. The trial in the aforesaid FIR is pending before the learned ASJ, Delhi. At this stage, present joint petition is filed stating that parties have not been able live together due to their temperamental differences and due to indifferent attitudes and there is no cohabitation between them since 2.11.2004. It is also mentioned that with the intervention of the relatives and family members, the petitioner No. 1 and 2 agreed to dissolve the marriage by mutual consent and agreement dated 8.10.2005 was entered into between them settling all their matrimonial disputes amicably. Copy of this agreement is placed on record as per which the petitioner No. 2 agreed to give a sum of Rs. 90,000/- to the petitioner No. 1. Rs. 20,000/- was to be given at the time of signing the agreement and Rs. 70,000/- was to be given in two Installments of Rs. 35,000/- each at the time of making joint statement before the matrimonial Court in First and Second Motions for divorce by way of mutual consent. This amount has also since been paid. Petitioner Nos. 1 and 2 have also taken divorce from each other and orders in this behalf have been passed by the learned ADJ.

5. It is also stated in the petition that FIR in question was lodged due to some misunderstanding and as per the agreement, the petitioner No. 1 agreed for quashing of the proceedings in the said FIR.

6. The learned Counsel for the State, however, has strongly opposed the prayer made in this petition. He submits that allegations in the FIR are of serious nature and are not confined to the matrimonial dispute or harassment/cruelty on account of demand of dowry, etc. His submission is that the petitioner No. 1 was mercilessly beaten as would be clear from the MLC of the complainant. He also submitted that report of Forensic Science Laboratory, Rohini, has been received which also confirms the allegations of sexual assault and, Therefore, in a case like this, proceedings should not be quashed, even if petitioner No. 1/ complainant has entered into an agreement and has agreed not to pursue the complaint.

7. The provisions which are attracted in the said FIR are already mentioned above. Petitioner Nos. 2 to 5 are charged with the offences which are not compoundable. Section 320(1) of the Cr.P.C. provides that offences mentioned in the table there under can be compounded by the persons mentioned in the Column No. 2 of the table. Further, Sub-section (2) provides that offences mentioned in the table could be compounded by victim with the permission of the Court. No doubt, even in respect of non-compoundable offences, the High Court can exercise the power and quash criminal proceedings if for the purpose of securing ends of justice, quashing of those proceedings becomes necessary. Judgment of the Hon''ble Supreme Court in the case of B.S. Joshi and Others Vs. State of Haryana and Another, , acts as guide for the High Court to determine whether to exercise the powers u/s 482, Cr.P.C. in a given case or not. The Court held in that matter that there was no general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 or extraordinary power under Article 226 of the Constitution of India. Therefore, 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.

8. Thus, it is clear that while exercising the inherent power for quashing u/s 482, Cr.P.C, it is for this Court to consider whether it is expedient and in the interest of justice to permit the prosecution to continue.

9. The edifice of criminal law is based on the principle that crime committed against the particular person is the crime against the society as well. Though in that particular case, the immediate victim may be the person who is affected by the said crime. This is the genesis beyond Section 320, Cr.P.C. which makes only trivial crimes as compoundable treating those offences as the ones which can be settled between the parties. But other offences, which are non-compoundable, are treated as crimes against society and, Therefore, normally the consent of the victim to compound those offences may not be of any use. Balance is sought to be maintained by the judgment of the Supreme Court in B.S. Joshi and Ors. v. State of Haryana and Anr. (supra) by giving the power to the High Court even in such cases but with rider that there are special features which may be present in

a particular case and may warrant in the interest of justice and as a rule of expediency to give quietus to those proceedings. Therefore, in the facts and circumstances of a given case, High Court has to come to a conclusion that whether it is expedient or in the interest of justice to quash the proceedings in view of the settlement between the parties, notwithstanding, a general rule that it is an offence against the society.

10. Applying the aforesaid test in the present case, it may be mentioned at the outset that the charges leveled by the complainant are of very serious nature and if correct, would tantamount to outraging the modesty of the prosecutrix. The cohabitation between the petitioner Nos. 1 and 2 did not even last for more than a day. On 1.11.2004, they were married and the incident in question took place on 2.11.2004 with repetition of alleged acts of beating on 3.11.2004, where after the petitioner No. 1 was brought to her parents' house by her parents. In the FIR, apart from physical beating, there is serious allegation against brother in law i.e. the petitioner No. 5.

11. The report dated 21.3.2005 of the Forensic Science Laboratory, Rohini, reveals shocking state of affair. Four parcels of complainant's clothes and other articles were sent for examination and the description of these articles contained in those parcels as well as results of analysis as per the said report is as under:

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

Parcel "1": One sealed cloth parcel sealed with the seal of "SGMH GOVT OF NCT DELHI" containing exhibits "1a" & "1b".

Exhibit "1a": One chunni.

Exhibit "1b": One salwar.

Parcel "2": One sealed cloth parcel sealed with the seal of "SGMH GOVT OF NCT DELHI" containing Exhibit "2" kept in a tube.

Exhibit "2": Cotton wool swab on a small wooden stick described as "Vaginal swab".

Parcel "3": One sealed cloth parcel sealed with the seal of "SGMH GOVT. OF NCT DELHI" containing Exhibit "3" kept in an injection vial.

Exhibit "3": Dark brown foul smelling liquid described as "Blood sample".

Parcel "4": One sealed cloth parcel sealed with the seal of "SGMH GOVT. OF NCT DELHI" containing Exhibit "4" kept in an injection vial.

Exhibit "4": Dark brown foul smelling liquid described as "Blood sample".

RESULTS OF ANALYSIS

1. Blood was detected on Exhibits "3" & "4".

2. Human semen was detected on Exhibit "2".

3. Semen could not be detected on Exhibits "1a" & "1b".

4. Report of serological analysis in original is attached herewith."

Note: Remnants of the exhibits have been sealed with the seal of VSN FSL DELHI.

Along with aforesaid report, results of blood sample were also sent stating that blood was detected on Exhibit 1.

12. Insofar as the complainant/petitioner No. 1 is concerned, she has already got rid of her husband as a decree of divorce has been granted for her Istridhan, etc. She has already received Rs. 90,000/- from the petitioner No. 2. Had the FIR been u/s 498A and/or 406 or even 323/328, IPC, the Court would have given indulgence by giving effect to the compromise between the parties. However, the allegations are Constituting offence under Sections 354 and 376, IPC, supported by the MLC as well as the aforesaid report of the Forensic Science Laboratory, cannot be discarded as they are of very serious nature. Even if the complainant has agreed not to pursue the said FIR, the Court cannot give its permission in a case like this. [State of Bihar and Anr. v. Md. Khalique and Anr. IV (2001) CCR 330 (SC) : 2002 (1) Crimes 162 (SC).

13. This petition is, accordingly, dismissed. However, it is made clear that the observations made in this judgment are purely in the context of the issue whether the matter be compounded or not and would have no bearing on the merits of the case.