
(2015) 09 RAJ CK 0055

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1619 of 2015

Shalivahan Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 320, 482

Hindu Marriage Act, 1955 — Section 13-B

Penal Code, 1860 (IPC) — Section 323, 354, 377, 406, 498-A

Citation : (2015) 09 RAJ CK 0055

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Devesh Bohra, for the Appellant; Vikram Singh Rajpurohit, Public Prosecutor, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Vijay Bishnoi, J—The matter comes up on an application (S.B. Criminal Misc. Application No. 83/2015) preferred on behalf of the respondent No. 2 for preponing the date.

2. For the reasons stated in the application, the application (S.B. Criminal Misc. Application No. 83/2015) is allowed.

3. With the consent of learned counsel for the parties the matter is heard finally.

4. This Criminal Misc. Petition under Section 482 Cr.P.C. has been filed by the petitioners with a prayer for quashing the FIR No. 76/2015 dated 02.06.2015 of Women Police Station, District Jodhpur for the offences punishable under Sections 498-A, 406, 323, 354 and 377 IPC.

5. In the instant case the respondent No. 2 has filed a complaint in the Court of Metropolitan Magistrate No. 2, Jodhpur Metropolitan under Section 156(3) Cr.P.C. and the same has been forwarded to the Women Police Station, District Jodhpur, hence, the impugned FIR has been registered against the petitioners for the

aforesaid offences.

6. It is submitted by learned counsel for the petitioners that on the complaint filed on behalf of the respondent No. 2, proceedings under Sections 498-A, 406, 323, 354 and 377 IPC are pending. It is further contended by learned counsel for the petitioners that the respondent No. 2 and the petitioners have compromised the matter and resolved the matrimonial dispute between them amicably. It is also contended by learned counsel for the petitioners that the parties have decided to live separately by mutual consent and in this regard a joint application under Section 13-B of the Hindu Marriage Act, 1955 is already filed by the petitioner No. 1 as well as the respondent No. 2 and the same is pending adjudication before the Family Court No. 1, Jodhpur Metropolitan.

7. Learned counsel for the petitioners has argued that since the matrimonial dispute has already been amicably settled between the parties and the petitioner No. 1 and the respondent No. 2 have decided to live separately by mutual consent, the impugned FIR against the petitioners may kindly be quashed.

8. Learned counsel for the respondent No. 2 has conceded that the matrimonial dispute between the parties has already been settled and the respondent No. 2 and the petitioner No. 1 have decided to live separately and the respondent No. 2 does not want to continue the impugned FIR lodged against the petitioners.

9. Heard learned counsel for the parties and perused the material available on record.

10. It is admitted that the matrimonial dispute between the parties have already been settled and a joint application under Section 13-B of the Hindu Marriage Act, 1955 is already filed by the petitioner No. 1 as well as the respondent No. 2 and the same is pending adjudication before the Family Court No. 1, Jodhpur Metropolitan. Today also learned counsel for the respondent No. 2 has categorically submitted that the respondent No. 2 does not want to continue the impugned FIR lodged against the petitioners as the dispute has already been resolved between the parties.

11. The Hon"ble Apex Court while answering a reference in the case of Gian Singh Vs. State of Punjab and Another, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 , has held as below:--

"57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute

would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

12. Having considered the facts and circumstances of the case and looking to the fact that the matrimonial dispute between the parties have already been settled and the petitioner No. 1 and respondent No. 2 have decided to live separately by mutual consent and in pursuance of that appropriate proceedings are also pending before the Family Court No. 1, Jodhpur Metropolitan, it is a fit case wherein the FIR lodged against the petitioners can be quashed while exercising powers under Section 482 Cr.P.C.

13. In view of the law laid down by the Hon"ble Supreme Court in Gian Singh's case (supra) and in the facts and circumstances as noted above this Criminal Misc. Petition is allowed and the FIR No. 76/2015 dated 02.06.2015 of Women Police Station, District Jodhpur for the offences punishable under Sections 498-A, 406, 323, 354 and 377 IPC is hereby quashed.

14. Stay petition is disposed of.