
(2015) 09 SHI CK 0147
In the High Court Of Himachal Pradesh
Case No : Criminal M.M. (O) No. 142/2015

Sikander Chander Bhushan Chauhan and Others	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 406, 498A, 498-A
Protection of Women From Domestic Violence Act, 2005 — Section 12, 29

Citation : (2015) 09 SHI CK 0147

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : G.C. Gupta, Sr. Advocate and Meera Devi, Advocate, for the Appellant; Vivek Singh Attri, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Marriage between petitioner No. 1 and respondent No. 2 was solemnized on 19.11.2011. Respondent No. 2 lodged FIR against the petitioners bearing registration No. 223/12 on 30.11.2012 for offence under section 498-A of the Indian Penal Code. Respondent No. 2 has also filed a complaint under section 12 of the Protection of Women from Domestic Violence Act before the court of Chief Judicial Magistrate, Shimla. The complaint under section 12 of the Act was allowed by the Chief Judicial Magistrate, Shimla and petitioner No. 1 was directed to deposit a sum of Rs. 50,000/- in the court besides Rs. 7,500/- per month as maintenance and Rs. 2,500/- per month as rental of the house to be taken by respondent No. 2. Petitioner filed an appeal before the learned Sessions Judge, Shimla. Proceedings arising out of FIR No. 223/2012 are pending before the trial court since 5.9.2013. The evidence till date has not been recorded.

2. The parties have arrived at a compromise whereby a sum of Rs. Five lakhs was to be paid to respondent No. 2 by the petitioners. A sum of Rs. Three lakhs has already been paid to respondent No. 2 by the petitioners. The balance

amount of Rs. Two lakhs is to be paid when the final order is rendered in the proceedings arising out of FIR No. 223/2012 as well as appeal filed under section 29 of the Protection of Women from Domestic Violence Act. A sum of Rs. 50,000/- has also been paid as maintenance towards settlement between the parties.

3. Since now the parties have arrived at amicable settlement without any pressure, continuation of the proceedings arising out of FIR. No. 223/2012 pending before the Chief Judicial Magistrate and the appeal under section 29 of the Protection of Women from Domestic Violence Act pending before the learned Sessions Judge, Shimla would be futile exercise and will misuse of process of law.

4. Their Lordships of the Hon''ble Supreme Court B.S. Joshi and Others Vs. State of Haryana and Another, have held that 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 well settled that the powers under section 482 have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Their Lordships have held as under:

[6] In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , this Court with reference to Bhajan Lal's case observed that the guidelines laid therein as to where the Court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.

[8] It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that 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.

[15] In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

5. Their Lordships of the Hon''ble Supreme Court in Preeti Gupta and Another Vs. State of Jharkhand and Another, have held that the ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. The tendency of implicating the husband and all his immediate relations is also not

uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. The criminal trials lead to immense sufferings for all concerned. Their Lordships have further held that permitting complainant to pursue complaint would be abuse of process of law and the complaint against the appellants was quashed. Their Lordships have held as under:

[27] A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*, comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:-

"Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

[28] We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.

[35] The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

[38] The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of

suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon''ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.

6. Their Lordships of the Hon''ble Supreme Court in *Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another*, have held that criminal proceedings or FIR or complaint can be quashed under section 482 Cr.P.C. in appropriate cases in order to meet ends of justice. Even in non-compoundable offences pertaining to matrimonial disputes, if court is satisfied that parties have settled the disputes amicably and without any pressure, then for purpose of securing ends of justice, FIR or complaint or subsequent criminal proceedings in respect of offences can be quashed. Their Lordships have held as under:

[13] As stated earlier, it is not in dispute that after filing of a complaint in respect of the offences punishable under Sections 498A and 406 of IPC, the parties, in the instant case, arrived at a mutual settlement and the complainant also has sworn an affidavit supporting the stand of the appellants. That was the position before the trial Court as well as before the High Court in a petition filed under Section 482 of the Code. A perusal of the impugned order of the High Court shows that because the mutual settlement arrived at between the parties relate to non-compoundable offence, the court proceeded on a wrong premise that it cannot be compounded and dismissed the petition filed under Section 482 . A perusal of the petition before the High Court shows that the application filed by the appellants was not for compounding of non-compoundable offences but for the purpose of quashing the criminal proceedings.

[14] The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In *B.S. Joshi*, this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

[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 its 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 the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

[17] In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.CR.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore."

7. Accordingly, in view of discussion and analysis made hereinabove, the petition is allowed. The proceedings arising out of FIR. No. 223/2012 pending before the Chief Judicial Magistrate and the appeal under section 29 of the Protection of Women from Domestic Violence Act pending before the learned Sessions Judge, Shimla are quashed. The agreed amount be paid to respondent No. 2 by the petitioners within a period of eight weeks from today. Pending application(s), if any, also stands disposed of. No costs.