

(2006) 01 KAR CK 0058
In the Karnataka High Court
Case No : Criminal Petition No. 71 of 2006

Smt. Nazimunnisa

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 320, 34, 354, 498A

Citation : (2006) CriLJ 1573 : (2006) 1 DMC 769 : (2006) ILR (Kar) 1621 :
(2006) 1 KarLJ 577 : (2006) 2 KCCR 913

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Mahesh and Company, for the Appellant; B.A. Belliappa, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—In this petition u/s 482 of the Cr. P.C., the petitioner has prayed for quashing of the entire proceedings in C.C. No. 13944 of 2004 on the file of IV Additional Chief Metropolitan Magistrate, Bangalore.

2. The brief facts necessary for the purpose of deciding the case are to the effect that the petitioner lodged the complaint with Vijayanagar Police against her husband Hidayathulla and his family members on the ground that subsequent to the marriage on 9-3-1998, the petitioner was harassed by her husband's family in connection with demand of dowry of Rs. 3,00,000/- along with one house, jewels and other household articles and the petitioner underwent torture both physically and mentally by her husband's family, which finally led the complainant to lodge the complaint which ultimately came to be registered as C.C. No. 13944 of 2004 for the offences punishable under Sections 498-A and 354 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 read with Section 34 of the IPC and the case is pending before the

Additional Chief Metropolitan Magistrate Court, Bangalore.

3. The present petition is filed for quashing of the proceedings mainly on the ground that the petitioner who is the complainant, is now not willing to prosecute the case against her husband and in-laws and intends to withdraw the case against them. Therefore, the petitioner seeks quashing of the entire proceedings before the Trial Court.

4. Heard the learned Counsel for the petitioner as well as the learned Government Pleader and perused the material on record.

5. Learned Counsel for the petitioner while submitting that the petitioner who is the complainant before the Trial Court is willing to put an end to the matter, but however, the petitioner's husband is not before this Court and nothing is known as to the reaction of the petitioner's husband in this regard.

6. Further, any attention was drawn to the decision of the Apex Court in the case of B.S. Joshi and Others Vs. State of Haryana and Another, , to submit that in cases of matrimonial disputes, it is the duty of Court to encourage the genuine settlements of the matrimonial disputes and therefore, the powers u/s 482 of the Cr. P.C., can be exercised in such cases. It was then submitted that the said decision of the Apex Court requires to be applied to the case on hand.

7. Learned Government Pleader also submitted that the powers of Section 482 of the Cr. P.C. can be exercised under special circumstances, subject to both the parties agreeing.

8. Having thus heard the learned Counsels for the parties and after carefully going through the material on record, I am unable to agree with the learned Counsel for the petitioner for more than one reason in that insofar as quashing of the complaint involving offences u/s 498-A and other sections of the Dowry Prohibition Act i.e., Sections 3 and 4 is concerned, it has to be mentioned that offence u/s 498-A is a non-compoundable offence. The Apex Court in a very recent judgment in the case of Bankat and Another Vs. State of Maharashtra, , has laid down the law that only the offences which are covered by Table 1 or Table 2 u/s 320 of the IPC can be compounded and rest of the offences punishable under IPC cannot be compounded. In view of the law laid down by the Apex Court with regard to compounding of offences, in the instant case the offence u/s 498-A is non-compoundable one. Hence, the question of the said offence being compounded will not arise.

9. As regards the submission of the learned Counsel for the petitioner that in the instant case what is sought by the petitioner is not compounding of the offence u/s 498-A, but only quashing of the proceedings before the Trial Court on the ground that the petitioner does not intend to prosecute the matter against the accused persons is concerned. No doubt, in the decision referred to by the petitioner's Counsel, Hon'ble Supreme Court has observed that it is permissible to exercise the inherent powers under Section 482 of the Cr. P.C. in relation to

matrimonial disputes and the duty of the Court is to encourage genuine settlements of matrimonial disputes, yet in the decision referred to by the petitioner's Counsel, the most important factor that led to the compounding of the offences is that the parties have arrived at a settlement and the settlement between the parties that was taken note of while making the observations that the Courts have a duty to encourage genuine settlement of matrimonial disputes, whereas in the case on hand, as already submitted by the petitioner's Counsel himself, it is only the petitioner who has come before this Court seeking for quashing of the proceedings, but the respondent-husband is nowhere in the picture nor is there any settlement arrived at between the parties. As rightly submitted by the learned Government Pleader the question of quashing the FIR in cases of offence, punishable u/s 498-A of the IPC will not arise, unless there is a genuine settlement of the dispute between the parties. In view of the above, the decision referred to by the petitioner's Counsel cannot come to his aid as the facts and circumstances in the said case and the one with which we are concerned are entirely different and more importantly, there is no settlement of dispute between the parties in the proceedings.

10. For the foregoing reasons, quashing of the proceedings pending before the Trial Court will not arise and as has been observed by the Apex Court in the case of Bankat, even assuming that there is a compromise between the parties that may be a factor to be taken into account in determining the quantum of sentence. No doubt, in the case on hand, no such compromise is forthcoming.

In the result, the petition is dismissed.