

(2012) 04 KAR CK 0060
In the Karnataka High Court
Case No : Criminal Petition No. 1926 of 2012

Sri Sridhar V., Smt.M.Vijayalakshmi and Smt. Vanitha Prakaas APPELLANT
Vs
State RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2012) 04 KAR CK 0060

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : G. Sukumaran and Associates, for the Appellant; Vijaykumar Majage, HCGP for R1: Sri T.N. Shivareddy, Advocate for R2, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr.Justice N. Ananda

1. The petitioners have sought for quashing the proceedings in C.C.No.23334/2009, pending trial for offences punishable under sections 498A r/w 34 IPC and also for offences punishable under sections 3 & 4 of the Dowry Prohibition Act. When the matter is taken up for hearing, petitioner No.1 (husband of II-respondent), petitioner No.2 (mother-in-law of II-respondent), petitioner No.3 (elder sister of petitioner No. 1) and II-respondent have filed a joint memo reading as hereunder:-

The petitioners No. 1 to 3 and the Respondent No.2 submit that, they have amicably settled their family disputes between them and further the petitioner No. 1 and the Respondent No.2 have also filed the decree of divorce, before the Family Court in M.C.No.2924/2012 and the same was granted on 18-2-2012 and sum of Ten lakhs was received by the Respondent No.2 towards permanent alimony and as such they pray that, this Hon"ble Court may be pleased to quash the proceedings in CC No.23334/2009 pending on the file of Chief Metropolitan Magistrate Court, Bangalore, in view of the settlement arrived between the

parties, in the interest of justice and equity.

2. In view of the joint memo, there is settlement of matrimonial dispute between petitioner No. 1 and II-respondent. The learned counsel appearing for parties submit that the proceedings pending in CC.No.23334/2009 pending trial for an offence punishable u/s 498A r/w 34 IPC and also for offences punishable under sections 3 & 4 of Dowry Prohibition Act may be quashed.

3. The learned HCGP relying on the judgment of the Supreme Court reported in Gian Singh -vs- State of Punjab and another; 2011 AIR SCW 305 would submit that this Court by exercising its power u/s 482 Cr.P.C. cannot convert a non-compoundable offence to a compoundable offence. The learned HCGP would submit that in the case of Gian Singh, the Supreme, Court has held that the decisions rendered by the Supreme Court in Nikhil Merchant -vs- Central Bureau of Investigation and another); AIR 2009 SC 428; B.S. Joshi and Others Vs. State of Haryana and Another, and AIR 2008 SC (Supp) 1171 (in the case of Manoj Sharma -vs- State and others) do not appear to be correctly decided. The Supreme Court in Gian Singh's case has directed that the matter be placed before the larger Bench to consider the correctness of the aforesaid three decisions.

4. The learned counsel for petitioners and learned counsel for II-respondent relying on the judgment of the Supreme Court reported in 2012 AIR SCW 445 (in the case of Shiji alias Pappu and others -vs- Radhika and another) submit that if the Court is satisfied that the proceedings have to be quashed u/s 482 Cr.P.C. by taking into consideration, the settled principles of law and the scope of section 482 Cr.P.C. the fact that the offences alleged in the impugned proceedings are non-compoundable would come in the way of quashing the proceedings.

5. The learned counsel would submit that in the case of Shiji alias Pappu and others -vs- Radhika and another (a subsequent judgment), the Supreme Court has referred to the earlier judgments reported in Nikhil Merchant -vs- Central Bureau of Investigation and another; AIR 2009 SC 428 B.S. Joshi and Others Vs. State of Haryana and Another, and AIR 2008 SC (Supp) 1171 (in the case of Manoj Sharma -vs- State and others). Therefore, the learned counsel would submit that notwithstanding the fact that the case pending before the Court below involves non-compoundable offences there is no need to continue with the proceedings as the parties have settled matrimonial disputes.

6. In the decision reported in 2011 AIR SCW 305(Gian Singh's case), the ease sought to be quashed involved an offence u/s 120B IPC, which is a non-compoundable offence. The accused had been convicted and the appeal against judgment of punishment was pending before the learned Sessions Judge. Before the appellate court, an application was filed for compounding of offences. Thereafter, petition u/s 482 Cr.P.C. for quashing the FIR was filed on the ground that the parties have compounded the offence. The petition u/s 482 Cr.P.C. was dismissed by the High Court and the same was taken before the Supreme Court

in Spl.Leave Appeal (Crl.) No.828/2010.

7. In the subsequent judgment reported in 2012 AIR SCW 445, the accused and complainant were the owners of the two adjacent properties. The first information was registered for offences punishable under sections 354 & 394 IPC. A petition u/s 482 Cr.P.C. was filed to quash the proceedings and when the petition was pending for consideration, the parties/appellants arrived at a compromise and sought for quashing of the proceedings. The Supreme Court referring to the earlier judgments reported in:

- i) Ishwar Singh Vs. State of Madhya Pradesh,
- ii) State of Karnataka Vs. L. Muniswamy and Others,
- iii) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others,
- iv) B.S. Joshi and Others Vs. State of Haryana and Another,
- v) Madhu Limaye Vs. The State of Maharashtra,
- vi) AIR 2008 SCW 2287
- vii) AIR 2009 SC 428
- viii) AIR 2008 SC (Supp) 1171

has held:

It is manifest that simply because an offence is not compoundable u/s 320, IPC is by itself no reason for the High Court to refuse exercise of its power u/s 482, Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the Trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution u/s 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable u/s 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court u/s 482 Cr.P.C. are not for that purpose controlled by Section 320, Cr.P.C. Having said so, we must hasten to add that the plenitude of the power u/s 482 Cr.P.C. by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power u/s 482 may be justified. All that we

need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence, for, it cannot assume the role of an appellate Court while dealing with a petition u/s 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

8. The decision reported in 2011 AIR SCW 306 (in the case of State of Kerala v. Haneef) was rendered by the two judges on 3(sic)1.2011. The decision reported in Shiji alias Pappu and Ors. -vs-Radhika and Another; 2012 AIR SCW 445 was rendered by the two judges on 14.11.2011.

9. In a decision reported in Govindanaik G.Kalaghatigi -vs- West Patent Press C.Ltd. and another; AIR 1980 KAR 93 a full Bench of this Court has held:

If two decisions of the Supreme Court on a question of law cannot be reconciled and if both Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Court.

In the case on hand, the II-respondent had filed first information alleging an offence punishable u/s 498A r/w 34 IPC and also for offences punishable under sections 3 & 4 of Dowry Prohibition Act against her husband, mother-in-law and sister-in-law.

10. Petitioner No. 1 (husband of II-respondent), Petitioner No.2 (mother-in-law of II-respondent). Petitioner No.3 (sister-in-law of II-respondent) and the II-respondent/complainant (wife of petitioner No. 1) are before this Court. They have filed a joint memo as aforesaid. They submit that marriage between petitioner No.1 and II-respondent has been dissolved by a decree of divorce and they are living separately. The II-respondent submits that she is not interested in prosecuting the case. In the circumstances, even if the proceedings before the court below are continued and a trial is held there are no chances of recording a conviction and the entire exercise of a trial would be an exercise in futility. Therefore, by following the decision reported in and having regard to the facts and circumstances of the instant case, I accept the petition and quash the proceedings in C.C.No.23334/2009 on the file of X ACMM at Bangalore.