
(2005) 04 AHC CK 0028

In the Allahabad High Court

Case No : Criminal M. Application No. 7192 of 2000

Syed Shabbir Hasan alias Maseeh Abbas and Others

APPELLANT

Vs

State of U.P. and Anr

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2005) 2 ACR 2043

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : S M. Iqbal Hasan and S.M.A. Kazmi, for the Appellant; A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard learned Counsel for the applicants and learned A.G.A.

2. This application has been filed for quashing the complaint and criminal proceedings in complaint case No. 480 of 1999. Inteshar Ahmad v. Shabbir Hasan and Ors. complaint case No. 480 of 1999., u/s 498A, I.P.C., read with Section 3/4 Dowry Prohibition Act, pending in the Court of Chief Judicial Magistrate, Ghazipur. The applicant No. 1 was married on 26.11.1998 with Bilqees Fatma alias Saba, sister of the opposite party No. 2. The husband and wife were divorced just after few months of their marriage. Talaknama is annexed as Annexure-2 to the application. The submission on behalf of the applicants is that there was consistent demand of dowry, consequently a complaint was filed on 23.2.1999 before the Chief Judicial Magistrate, Ghazipur u/s 498A, I.P.C. and Section 3/4, Dowry Prohibition Act, Police Station Kotwali, district Ghazipur. The learned Magistrate after recording statements under Sections 200 and 202, Cr. P.C. summoned the accused on 2.7.1999. The complaint and summoning order is impugned and sought to be quashed in

exercise of inherent powers. This Court had issued notices to the opposite party No. 2 to show cause why the application should not be allowed and the proceedings were stayed. A supplementary affidavit dated 20.7.2004 has been filed bringing to the notice of the Court that the parties have compromised and deed of compromise has been filed before the Chief Judicial Magistrate, Ghazipur. A copy of the compromise deed has been annexed along with supplementary-affidavit. Since the parties have compromised, the prayer is that the criminal complaint may be quashed. The legal position is that Section 498A is not compoundable and as such even if the compromise has been filed in the complaint case, the criminal case cannot be compounded. The learned Counsel for the applicants has placed reliance on a decision of the Apex Court in the case of B.S. Joshi and Ors. v. State of Haryana and Anr. 2003 (3) ACR 1305 (SC): 2003 (2) SCC 524: 2003 (51) ALR 222. The Apex Court has ruled that in case the criminal proceedings are initiated either on the basis of F.I.R. or a criminal complaint and the husband and wife involved in the matrimonial dispute, arrive at a subsequent settlement, the very basis or foundation of prosecution case stands eroded and mere technicality, that offence involved is non-compoundable one, should not be allowed to stand in the way of quashing of the proceedings by High Court in exercise of inherent powers u/s 482, Cr. P.C. read with Articles 226 and 227 of the Constitution of India. The Apex Court while laying down the law that in such a case where the parties have come to terms and entered into compromise in the matrimonial case which had led to initiation of criminal proceedings, had taken into consideration all the previous decisions State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 Supp (1) SCC 355 ; Madhu Limaye Vs. The State of Maharashtra, and Surendra Nath Mohanty and Anr. v. State of Orissa AIR 1991 SC 2181. Paragraph 9 of the said decision is quoted below:

In State of Karnataka V. L. Muniswami and Ors. considering the scope of inherent power of quashing u/s 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the Legislature. The Court said that the compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the F.I.R. of the type in question. As earlier noticed, who she has filed an affidavit that the F.I.R. was registered at her instance due to temperamental differences

and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved dispute with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. Answer clearly has to be in negative. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.

3. I have perused the compromise deed, which is Annexure-1 to the supplementary-affidavit filed in the Court of C.J.M., Ghazipur in Case No. 480 of 1999. The recital of the compromise clearly mentions that parties are divorced and all the belongings of Smt. Bilquis have been returned and she has no claim whatsoever. Parties are free to contract another marriage and the wife is willing to withdraw all the criminal proceedings. The Apex Court had quashed the proceedings in an identical case of B. S. Joshi (supra). This Court has also quashed the proceedings in exercise of inherent jurisdiction in a similar case Jitendra Rajpal and Ors. v. State of U. P. and Ors. 2001 (2) ACR 1767 (LB): 2001 AIJIC 353.

4. After considering the aforesaid decision and also that the parties have filed a compromise in the complaint case, I find it a fit case for quashing the complaint and summoning order dated 2.7.1999, continuation of the criminal proceedings will amount as an abuse of the process of the Court.

5. For the reasons discussed above, this application is finally allowed. The complaint and summoning order dated 2.7.1999 are quashed. There shall be no order as to costs.