

(2004) 10 OHC CK 0016
In the Orissa High Court
Case No : Criminal MC No. 675 of 2004

Tasoraj Mohamad and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 313, 32, 323, 406, 498A

Citation : (2005) 1 DMC 522 : (2005) 30 OCR 188 : (2004) 2 OLR 642

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : G. Tripathy, B. Jalli, D.R. Mohapatra and B. Pasayat, for the Appellant; Additional Government Advocate for the Opposite Party No. 1 and N.P. Rath and S. Pradhan for the Opposite Party No. 2, for the Respondent

Judgement

A.K. Parichha, J.—This is an application u/s 482 of the of Criminal Procedure for quashing the Order of cognizance passed by the learned J.M.F.C., Nimapara in G.R. Case No. 734 of 2002.

2. Petitioner No. 1 and opposite party No. 2 were married on 12.1.2001 and after marriage, they lived in the joint family residence of petitioner No. 1. Some time after the marriage, opposite party No. 2 lodged an F.I.R. in Nimapara Police Station alleging that the petitioner tortured her both physically and mentally, did not give her minimum food and forcibly terminated her pregnancy. She also alleged that such ill-treatment and torture was inflicted because dowry demand of the petitioners was not fulfilled by her parents. Basing on this F.I.R. investigation was conducted and charge-sheet was submitted against all the petitioners for the offences under Sections 498-A, 313, 323/32, I.P.C. and Section 4 of the of the Dowry Prohibition Act. The petitioners have challenged the said Order of cognizance in the present application.

3. During pendency of the proceeding, opposite party No. 2 appeared through

her Advocate and made a submission that in the meantime amicable settlement has been reached between her and the petitioner No. 1 and both of them are living under the same roof happily. She prayed that the cognizance taken against the petitioners be quashed, so that they can live happily and peacefully. In Order to know the genuineness of this prayer, opposite party No. 2 was directed to file an affidavit whether in fact the dispute has been settled between the parties. In response to such Order, opposite party No. 2 filed an affidavit stating therein that in fact the dispute has been settled between the parties and now she is living happily with petitioner No. 1.

4. Learned Counsel for the petitioners and opposite party No. 2 submitted that in view of the fact that the dispute has been settled between the parties with the intervention" of the relatives, the cognizance already taken against the petitioners be quashed.

5. Learned Addl. Government Advocate submits that the offences u/s 498-A and Section 4 of the Dowry Prohibition Act are not compoundable and so, cognizance cannot be quashed basing on the compromise entered into by the parties.

6. From the affidavits filed by opposite party No. 2, there is no doubt that the dispute between the parties has been settled and the petitioner No. 1 and opposite party No. 2 are living together. In that situation continuance of the criminal proceedings against the husband and in-laws of opposite party No. 2 will not be in the best interest of the parties. Moreover, even if the criminal case initiated against the petitioners is allowed to continue, the chance of conviction is very bleak in view of the fact that the parties have already entered into a settlement outside the Court. In such backdrop, the only question for consideration is whether cognizance can be quashed u/s 482, Cr. P.C, even if some of the offences alleged are not compoundable u/s 320, Cr.P.C. The answer to this question is directly provided by the Apex Court in the case of B.s. Joshi and Ors. v. State of Haryana and Anr. 1 (2003) DMC 524 (SC): (2003)2 SLT 689:2 (2003) CCR 57 (SC):(2003) 25 OCR (SC) 99. In that case the wife filed a criminal complaint against the husband for the offences under Sections 498-A and 406, I.P.C. The parties subsequently having settled their disputes, the wife requested for quashing of the F.I.R. The High Court of Punjab and Haryana refused to exercise the inherent powers to quash the proceedings on the ground that Section 320, Cr.P.C. is an embargo to exercise such inherent powers. The Apex Court while setting aside this view of the High Court of Punjab and Haryana observed that when quashing of proceedings is necessary for the purpose of securing ends of justice, Section 320, Cr.P.C. cannot stand as a bar. The Apex Court also observed that where chance of conviction is bleak, the Court can proceed to quash the proceedings taking into consideration the special facts of a case. The legal position is, therefore, clear that for securing ends of justice, criminal proceedings can be quashed even though the offences are not compoundable.

7. In the present case, as has been indicated above, the parties have now sorted

out their differences and are living together happily and the aggrieved party, opposite party No. 2, has herself requested for quashing of the cognizance taken against the petitioners. The continuance of the criminal proceedings against the petitioners will, therefore, benefit none on the other hand, quashing of the proceedings will bring peace and amity in the family. So, for securing ends of justice, inherent powers u/s 482, Cr.P.C. can be exercised for quashing of the criminal proceeding.

8. In the result, therefore, the cognizance taken against the petitioners by the learned J.M.F.C, Nimapara in G.R. Case No. 734 of 2002 is quashed,

9. CrI.MC is disposed of accordingly.