

(2009) 06 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 13118 of 2009

Teerath Kumar

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2009) 3 ACR 2879

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : C.L. Pandey and Ananya Pandey, for the Appellant; A.G.A., for the Respondent

Judgement

Sudhir Agarwal, J.—Heard Ms. Ananya Pandey, learned Counsel for the applicant and learned A.G.A. for the Respondents and perused the record.

2. This application u/s 482, Cr. P.C. has been filed seeking quashing of the proceedings in Case Crime No. 860 of 2007, State of U. P. v. Teerath Kumar u/s 498A/323/504/506, I.P.C. and Section 3/4 of D. P. Act pending before the Special Chief Judicial Magistrate, Agra, (hereinafter referred to as the Magistrate). The applicant has also sought quashing of the order dated 2.5.2008, passed by the Magistrate (Annexure-3 to the affidavit filed alongwith application) and the Charge Sheet No. 27 of 2007 dated 7th May, 2007 bearing Crime No. 31 of 2007, dated 7th May, 2007 under Sections 498A and 323/504/506, I.P.C. and Section 3/4 of D. P. Act (Annexure-2 to the affidavit).

3. Learned Counsel for the applicant submitted that the entire proceedings are illegal inasmuch as the allegations levelled against the accused do not constitute any cognizable offence, and in fact the proceedings are motivated and sheer harassment of the accused. She further contended that in any case the applicant

is ready to enter into settlement with his wife Smt. Rekha the daughter of Respondent No. 2 and, therefore, the matter may be referred to Mediation Centre and in the meantime the proceedings pending before Magistrate concerned be kept in abeyance. For the said purpose, she placed reliance on a single Judge judgment of this Court in Criminal Misc. Application No. 9421 of 2009, Heneef and Ors. v. State of U. P., decided on 6th May, 2009 and the Apex Court decision in B. S. Joshi and Ors. v. State of Haryana AIR 2003 SCC 1386: 2003 (2) ACR 1305.

Having heard the learned Counsel for the parties, however, I do not find any force in any of the above submissions advanced on behalf of the applicant and in my view the application deserves to be quashed.

4. From a bare perusal of the F.I.R. as well as the charge-sheet, it is evident that the allegations are that the accused beat, his wife Smt. Rekha, demanded dowry etc. and the lady also suffered serious injuries. The police having made preliminary investigation and collecting cogent evidence found commission of a cognizable offence and thus has submitted the charge-sheet. It is incorrect that the said allegations do not constitute any cognizable offence. Whether the allegations are correct or not, that is a matter to be seen during trial and not at this stage. Quashing of charge-sheet in criminal proceedings in exercise of power u/s 482, Cr. P.C. is not a routine matter but this Court should exercise its inherent power u/s 482, Cr. P.C. sparingly and strictly if the conditions provided therein are attracted. The power u/s 482, Cr. P.C. can be exercised for enforcement of an order of the Court under the code or if there is a glaring case of abuse of process of law or to meet the ends of justice. On mere asking or in a routine manner, such power is not to be exercised. That too, at the initial stage when the charge-sheet has been filed and the regular trial is yet to proceed. I need not burden this judgment with catena of the authorities of the Apex Court expressing its views time and again that power u/s 482, Cr. P.C. should not be exercised by the High Court in a casual fashion but sparingly when a case within the 4 corners of Section 482, Cr. P.C. is made out. The nature of power u/s 482, Cr. P.C. is, in fact, an exception and not the rule. In *State of Punjab v. Kasturi Lal* 2004 CriLJ 3866: 2005 (2) ACR 2133 (SC), it was observed that Section 482, Cr. P.C. only saves the inherent power which the Court possessed even before the enactment of the code. It is true that no exhaustive list can be given as to when it would be necessary to pass an order to otherwise secure the ends of justice or to prevent the abuse of the process of the Court and that would depend on the facts and circumstances of each case but at least this much is certain that this power can be exercised only when this Court is satisfied that there is a great miscarriage of justice or abuse of the process of the Court or the required statutory provisions have not been complied with, resulting in failure of justice. None of these conditions could be pointed out by learned Counsel for the applicant warranting any interference by this Court.

5. Now coming to the second aspect of the matter that the applicant is ready and

inclined to enter into compromise with the wife and therefore, the matter should be referred to Mediation Centre, I find that even this request cannot be accepted in a routine manner, just on mere asking but there has to be material on record to show the genuineness and bona fide of the applicant that he is ready and willing to enter into settlement in matrimonial matter and further this Court must also be satisfied from the record that there is some probability or possibility of compromise or settlement between the parties. If such a prayer ex parte is accepted, it may prolong the trial before the court below and may prove to be a pretext to delay the trial by allowing a matter to trouble to extra judicial adjudicatory forum like Mediation Centre etc., without recording any finding of possibility of settlement or compromise between the parties. Any order to defer the proceedings of trial till the matter would remain pending before such extra-judicial adjudicatory forum would only cause harassment to other party and delay criminal administration of justice in the Court of Law. If the Court without recording its prima facie satisfaction on the basis of some material that there is some scope of settlement, refer the matter for mediation etc. If the applicant who has shown his intention regarding settlement or compromise has any bona fide to do so, he has to show that he has taken steps or made attempt in pursuance thereto. For example, he can show that he has written letters to the wife or her parents proposing compromise or settlement, or that he has made an application before the trial court with such a request and so on. I need not give an exhaustive list and the ways whereby such intention can be shown by the accused but atleast there has to be something on record for the satisfaction of the Court that if an attempt is made for out of Court settlement or compromise between the parties, in matrimonial matters, the same may amicably be settled. Of late, experience shows that in a very negligible number of matters the parties have arrived at settlement but in rest of the cases this approach has, infact resulted only in a huge delay in the trial which is from more than year to several years. I am fully conscious of the fact that in matrimonial matters sometimes on account of momentary passion or difference of temperament, attitude etc., some misunderstanding takes place which gets enlarged to an extent and to such a serious stage where even the criminal proceeding gets initiated by one or the other party and if an attempt is made, to settle their dispute amicably the parties may come together but in such matters the Court has to take a realistic view which may help the parties and not to victimize one of the parties at the cost of others.

6. In B. S. Joshi (supra) from my reading of the judgment atleast, I do not find any such wide and general proposition that in matrimonial matters as and when somebody makes a request for compromise or settlement, a criminal trial or proceedings should immediately be deferred and the matter should be referred for settlement before extra judicial adjudicatory forums as is the proposition advanced by the learned Counsel for the applicant.

7. From the facts stated in paras 2 and 3 of the judgments in B. S. Joshi (supra) it appears, that B. S. Joshi, the husband, was married on 21st July, 1999 with

Respondent No. 2. Within less than a year, both started living separately. The wife thereafter lodged F.I.R. on 2nd January, 2002 u/s 498A/323/406, I.P.C. against the husband, father-in-law, mother-in-law and brother-in-law. Soon thereafter the wife filed an affidavit stating that the F.I.R. was registered at her instance due to temperamental difference and implied imputation. She further said that her dispute with the Appellant that is husband B. S. Joshi and his family members, had been finally settled as the parties had agreed for mutual divorce. The affidavit of the wife further stated that on filing of divorce petition before competent court for mutual divorce, statements of first motion were recorded on 18.7.2002 and 22.9.2002 and were also recorded in second motion on 13th September, 2002. In the circumstances she requested for quashing of the F.I.R. and criminal proceedings, which was consented by the other side. However, the said application was opposed by the State. The High Court declined to exercise its power u/s 482, Cr. P.C. read with Article 226/227 of the Constitution of India on the ground that the offences under Sections 498A and 406, I.P.C. being non-compoundable u/s 320 of the Code, it is not permissible to quash criminal proceedings or F.I.R. or complaint on mere compromise or settlement between the parties. In the circumstances, the question formulated by the Apex Court was "whether matrimonial disputes of the nature of crime in that case where the matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes and when both the parties jointly approach the High Court for quashing of the criminal proceedings, F.I.R. or complaint etc., can such a prayer be declined, merely on the ground that the offences being non-compoundable u/s 320, Cr. P.C. its quashing is impermissible."

8. Answering the above question the Apex Court held that the High Court's technical view in such a matter would be counter productive and would act against interest of women and also against the object for which Section 498A was added in the statute. There is every likelihood in such matters, if power inherent in the Court, to quash the proceedings to meet the ends of justice is not exercised that it may prevent women from settling the matters earlier. In support of what was held by the Apex Court above, it referred to its earlier decision in Kaliappan Vs. State of Tamil Nadu, and said that if trial in such a matter is allowed to continue despite the fact that the parties are agreeable for mutual settlement, it would be sheer wastage of time, inasmuch as the wife may not support the prosecution case, no evidence may come to prove the case against the accused and trial may result in acquittal after wastage of a lot of precious time of the Court as well as public at large. In Para 10 of the judgment, the Apex Court in B. S. Joshi (supra) observed:

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, now 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 reasons that she has

resolved disputes 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.

9. Similarly referring to earlier decision in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, the Court said in para 11 as under:

It was held that while exercising inherent power of quashing u/s 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case also quash the proceedings.

10. Existence of special features in such matrimonial cases, i.e., in *B. S. Joshi (supra)*, as they existed at that time, mentioned in para 12 of the judgment, and considering all these circumstances, the Apex Court held that in such matters the High Court in exercise of its inherent power can quash criminal proceedings, F.I.R. or criminal complaint and Section 320 of the Code would not limit its power in such matters.

11. In my view the ratio of the judgment is very clear. There can be no doubt about the inherent power of quashing the criminal proceedings vested with the High Court in such circumstances or any other kind of circumstances leading to such conclusion. But in the case in hand, there is no material on record to show any attempt on the part of the accused to enter into a settlement or compromise with the wife. On the contrary, after lodging of F.I.R. on 7th May, 2007, the police made its investigation, examined a number of witnesses which included the neighbours of accused applicant and finding him, prima facie, guilty a charge-sheet was submitted on 7th June, 2007. The Magistrate after registering the case issued summons whereafter the accused put on his appearance on 29th April, 2008 and thereafter from 17th March, 2009 and onwards he has continuously sought adjournments. When the proceedings reached the stage of framing charge, he has come to this Court. He has not taken any steps whatsoever to show that he intends to settle the matter and is willing to keep the wife with him. It is only during the course of the arguments before this Court, learned Counsel for the applicant made settlement that since applicant wants to enter into

compromise with the wife, therefore, the matter may be referred to Mediation Centre and till the alleged possible compromise is probed by the Mediation Centre, trial before the Magistrate be stayed. I am afraid this matter should not be referred to the Mediation Centre in the above facts and circumstances. This would only help the accused to delay the trial without there being any iota of possibility supported with some material to show that there is some possibility of compromise or settlement between the parties.

12. In my view it would be appropriate in such matters that the accused must show his intention of compromise or settlement first to the other side and thereafter before the trial court itself. The High Court in such matters should consider the request of accused with great care and should not permit the course of reference to Mediation Centre in a routine and casual fashion.

13. In view of the above, I do not find any merit in this application. It is accordingly dismissed.