

(2014) 04 SHI CK 0026
In the High Court Of Himachal Pradesh
Case No : Cr. M.M.O. No. 30 of 2014

Virender Singh

APPELLANT

Vs

Anita Rani

RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Criminal Procedure Code, 1973 (CrPC) — Section 173, 320, 482
Hindu Marriage Act, 1955 — Section 13(1)(ia)(ib)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 320

Citation : (2014) CriLJ 3998

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : N.K. Thakur, Senior Advocate and Ishita Bhandari, Advocate for the Appellant; Pawan Gautam and Neeraj K. Sharma, Dy. A.G, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—The petitioner, by way of this petition, has sought for quashing of FIR No. 181 of 2008 dated 20.12.2008, registered at Police Station Gagret, District Una, under Section 498A of the Indian Penal Code and consequent criminal proceedings in Criminal Case No. 52-1/2009, titled State v. Virender Singh pending before learned Judicial Magistrate, 1st Class, Court No. II, Amb, District Una, H.P. Key facts necessary for the adjudication of this petition are that the marriage between the petitioner and respondent No. 1 was solemnized on 20.11.2000. Respondent No. 1 lodged a report against the petitioner with the Police Station Gagret, on the basis of which FIR No. 181 of 2008 was registered on 20.12.2008 under Section 498A of the Indian Penal Code. The challan was put up before the learned Judicial Magistrate, 1st Class, Court No. II. Petitioner also filed a petition against respondent No. 1 under Section 13(1)(ia)(ib) of the Hindu Marriage Act before the learned Additional District Judge (II) Kangra at Dharamshala, Camp at Jawali. Petitioner and respondent No. 1 settled the dispute and agreed for dissolution of marriage and in lieu of it, a sum of Rs.

15,00,000/- was agreed to be paid by the petitioner to respondent No. 1 and her son to be shared by them equally. The settlement deed is Annex-ure P-2. The respondents have also received the amount as is evident from Annexures P-3 and P-4 respectively. Statements of respondent No. 1 and petitioner were recorded vide Annexures P-5 and P-6 respectively. Learned Additional District Judge on the basis of settlement deed arrived at between the parties passed a decree for dissolution of marriage between the parties under Section 13(1)(ia) (ib) of the Hindu Marriage Act to secure ends of justice. The settlement arrived at between the parties is genuine.

2. According to para 2 of the settlement deed, Annexure P-2, the parties have agreed to dissolve the marriage with their free will, consent and the other litigations, which are pending in various courts against each other, i.e. the case pending before the Court of Judicial Magistrate, 1st Class, Amb under Section 498A of IPC, having FIR No. 181/2008 dated 20.12.2008, Police Station Gagret, District Una were agreed to be withdrawn.

3. The Court is of the considered view that in view of the settlement deed, Annexure P-2 arrived at between the parties and order dated 28.12.2013 passed by the learned Additional District Judge, Annexure P-7, FIR No. 181 of 2008 dated 20.12.2008, registered at Police Station Gagret, District Una, under Section 498A of the Indian Penal Code and consequent proceedings in Criminal Case No. 52-1/2009, titled State v. Virender Singh pending before the Judicial Magistrate, 1st Class, Court No. II, Amb, District Una, H.P., are liable to be quashed and set aside.

4. Their Lordships of the Hon''ble Supreme Court in B.S. Joshi and Others Vs. State of Haryana and Another, have held that it is duty of the court to encourage genuine settlements of matrimonial disputes. Their Lordships have further held that section 320 of the Code of Criminal Procedure would not be a bar to the exercise of power of quashing under section 482 of the Code of Criminal Procedure. Their Lordships have held as under:

"8. It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in section 482 of the Code of extra ordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

12. The special features in such matrimonial Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, duty of the court to encourage genuine settlements of matrimonial disputes.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section

320 of the Code does not limit or affect the powers under section 482 of the Code."

5. Their Lordships of the Hon^{ble} Supreme Court in *Shiji @ Pappu and Others Vs. Radhika and Another*, have held that simply because an offence is not compoundable under section 320 is by itself no reason for High Court to refuse exercise its power under section 482 of the Code of Criminal Procedure. Their Lordships have held as under:

"17. It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 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 under Section 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 under Section 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 under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C."

6. Their Lordships of the Hon^{ble} Supreme Court in *Dimpey Gujral and Others Vs. Union Territory Through Administrator, U.T. Chandigarh and Others*, have held that continuation of proceedings would in circumstances be abuse of process of court when the parties have entered into compromise irrespective that one of offences was non-compoundable. Their Lordships have held as under:

"4. The question which now remains to be answered is whether since one of the offences alleged in the FIR is non-compound-able, the FIR could be quashed. In certain decisions of this court in view of the settlement arrived at by the parties, this court quashed the FIRs though some of the offences were non-compoundable. A two Judges' Bench of this court doubted the correctness of those decisions. Learned Judges felt that in those decisions, this court had permitted compounding of non-compoundable offences. The said issue was, therefore, referred to a larger Bench. The larger Bench in *Gian Singh v. State of Punjab & Anr.*, in SLP (Cri.) No. 8989 of 2010 along with other connected matters, *Gian Singh Vs. State of Punjab and Another*, , considered the relevant provisions of the Code and the judgments of this court and concluded as under:

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FTR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320

of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

5. In light of the above observations of this court in *Gian Singh*, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Sections 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

7. Their Lordships of Hon"ble Supreme Court in *Jitendra Raghuwanshi and Others*

Vs. Babita Raghuvanshi and Another, have held that even in non-compoundable offences pertaining to matrimonial disputes, if the Court is satisfied that parties have settled the disputes amicably and without any pressure, then for purpose of securing ends of justice, FIR or complaint or subsequent criminal proceedings in respect of said offences can be quashed under Section 482 of the Criminal Procedure Code. Their Lordships have held as under:

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders."

Accordingly, in view of the discussion and analysis made hereinabove, the petition is allowed. FIR No. 181 of 2008 dated 20.12.2008, registered at Police Station Gagret, District Una, under Section 498A of the Indian Penal Code is quashed and set aside. The proceedings in Criminal Case No. 52-1/2009, titled State v. Virender Singh pending before the Judicial Magistrate, 1st Class, Court No. II, Amb, District Una, H.P., are ordered to be closed. Pending application(s), if any, also stands disposed of. No order as to costs.