

(2003) 07 AHC CK 0035

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2078 of 2002

Vivek Mehrotra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 245(2), 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 109, 294, 323, 494, 495

Citation : (2003) 3 ACR 2626

Hon'ble Judges : A. Mateen, J

Bench : Single Bench

Advocate : Mridul Rakesh and Manish Bajpai, for the Appellant; Virendra Bhatia, Vivek Shotria and A.M. Shukla, for the Respondent

Judgement

A. Mateen, J.—Heard Sri Mridul Rakesh learned Counsel for the Petitioners, learned A.G.A. as well as Sri Virendra Bhatia, learned Counsel for the opposite party No. 2.

2. This petition has been preferred by the Petitioners u/s 482, Cr. P.C., praying therein that the proceedings relating to Case No. 464 of 2001 (Crime No. 240 of 2000), State v. Vivek Mehrotra and Ors. pending in the Court of Special Chief Judicial Magistrate (Custom), Lucknow under Sections 498A, 323, 504, I.P.C. and Section 3/4 Dowry Prohibition Act of police station Ghazipur, district Lucknow be quashed. It has also been prayed that the order dated 9.4.2001 contained in Annexure-3 passed by the Court of Special Chief Judicial Magistrate, Lucknow, taking cognizance and summoning Petitioners under the aforesaid sections be also quashed.

3. The brief facts giving rise to the present petition are that an F.I.R. was lodged by the opposite party No. 2, namely, Smt. Puneeta Mehrotra wife of Vivek Mehrotra on 30.1.2000 at police station Colonelganj, Allahabad, against the

Petitioners Vivek Mehrotra, Smt. Pushpa Mehrotra and Pushkar Narain Mehrotra (P. N. Mehrotra) which was registered as Crime No. 28 of 2000 at P.S. Colonelganj, Allahabad u/s 498A, 504, 323, I.P.C. read with Section 3/4 Dowry Prohibition Act. This Crime Case No. 28 of 2000 of P.S. Colonelganj, Allahabad, was transferred to police station Ghazipur, Lucknow for the purpose of investigation. Since investigation agency of police station Colonelganj, Allahabad, was of the view that assertion and allegation in the F.I.R. indicate that cause of action relates to district Lucknow, as such, the same was transferred to police station Ghazipur, Lucknow, which was renumbered as Case Crime No. 240 of 2000 under Sections 323, 504, 498A, I.P.C. read with Section 3/4 Dowry Prohibition Act at police station Ghazipur, Lucknow.

4. It will also be not out of place to indicate that Respondent No. 2, namely, Ms. Puneeta Capoor (earlier she used to write Puneeta Mehrotra as indicated by her in the F.I.R. lodged vide Case Crime No. 240 of 2000 vide Annexure-1). As such, hereinafter she will be referred to as Smt. Puneeta Mehrotra.

5. After investigation since investigating agency of police station Ghazipur, Lucknow found allegation so levelled on the basis of investigation to be true, submitted charge-sheet against the Petitioners, namely, Vivek Mehrotra, Smt. Pushpa Mehrotra and P. N. Mehrotra under Sections 498A, 504, 324, I.P.C. read with Section 3/4 Dowry Prohibition Act upon which the Magistrate had taken cognizance of the same and summoned the Petitioners vide order dated 9.4.2001 contained in Annexure-3 to the petition. It is also relevant to point out here that Vivek Mehrotra (Petitioner No. 1) is husband of complainant Smt. Puneeta Mehrotra (opposite party No. 2) and Pushkar Narain Mehrotra and Smt. Pushpa Mehrotra are father-in-law and mother-in-law of Smt. Puneeta Mehrotra (opposite party No. 2) and parents of Vivek Mehrotra. It has also been brought to the notice of the Court by means of Annexure-4 that Smt. Puneeta Mehrotra had filed a suit for dissolution of marriage u/s 13 of Hindu Marriage Act in the Family Court, Allahabad vide Case No. 11 of 2001 and the same has been decreed ex parte vide judgment and order dated 19.8.2002. Even the opposite party No. 2, namely, Smt. Puneeta Mehrotra complainant of Crime No. 240 of 2000 had moved an application u/s 125, Cr. P.C. for maintenance against her husband Vivek Mehrotra, Petitioner No. 1 in the present case, which was registered as Case No. 511 of 1999 in the Court of Family Judge, Allahabad which was also got dismissed as withdrawn since the parties had settled the matter outside the Court. Copy of the said judgment and order passed by family court, dated 3.8.2002 has been annexed as Annexure-5 to the present petition. Even the Criminal Complaint Case No. 11 of 2001 filed by Smt. Puneeta Mehrotra against her husband Vivek Mehrotra and others under Sections 294, 495, 109, I.P.C. which was pending in the Court of Special Chief Judicial Magistrate, Allahabad, was also got dismissed as not pressed by Smt. Puneeta Mehrotra (opposite party No. 2) on the ground that parties have compromised the dispute out of Court and since the decree for divorce has also been granted by family court, as such Smt. Puneeta Mehrotra does not want to press her complaint. As

such, the said complaint was dismissed and the accused persons in the said complaint were discharged u/s 245(2), Cr. P.C.

6. It has also been stated by the parties in the present petition that since both the parties have exchanged all the valuables and belongings received by them before or at the time of or after marriage to their full satisfaction and both the parties, i.e., the Petitioners on one hand and Smt. Puneeta Mehrotra (now Ms. Puneeta Capoor) have no claim against each other and since all the cases between the parties as referred to above have been disposed of and no other dispute exists between them except Criminal Misc. Case No. 464 of 2001 arising out of Crime No. 240 of 2000 under Sections 323, 504, 506, I.P.C. and 3/4 Dowry Prohibition Act, police station Ghazipur, Lucknow in which the Petitioners have been summoned, the proceedings thereof if be allowed to continue shall be a sham and shall be of no value, as such, the same be quashed.

7. Learned Counsel for the opposite party No. 2 has filed a counter-affidavit admitting each and every assertion so made in the petition and even in para 5 of the said counter-affidavit filed and sworn by the opposite party No. 2, it has been indicated that "quashing of the charge-sheet and criminal proceedings arising out of it will advance the cause of justice and deponent has no objection whatsoever to it. The Hon"ble Court may be pleased to allow the application u/s 482, Cr. P.C."

8. The learned A.G.A. stressed that Section 320, Cr. P.C. bars compounding of Section 498A that is to say that Section 498A is not compoundable as such relief prayed by the Petitioners cannot be granted.

9. The question for determination as such in the present petition and in the circumstances of the present case relates to matrimonial dispute and matrimonial disputes of the kind in the present case as being witnessed by the Courts have been on considerable increase in recent times resulting in filing of complaints by wife under Sections 498A, 323, 504, I.P.C. as well as Section 3/4 Dowry Prohibition Act not only against the husband but his other family members also. In such cases matters are resolved either by the wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending dispute as a result whereof as seen in the present case after settlement, the parties have jointly approached this Court for exercising its inherent power u/s 482, Cr. P.C. with the prayer for quashing of criminal proceeding which had arisen/offshoot with respect to the F.I.R. lodged by Respondent No. 2 vide Case Crime No. 240 of 2000 under Sections 498A, 323, 504, I.P.C. read with Section 3/4 Dowry Prohibition Act has to be seen as to whether the prayer as prayed in the petition can be declined on the ground that since the offence at least u/s 498A is non-compoundable u/s 320 of the Code, therefore, it is not permissible for the Court to quash the Criminal Proceedings or F.I.R. or complaint?

10. In the case in hand as indicated above, it comes out that the F.I.R. which was lodged by Respondent No. 2 vide Case Crime No. 240 of 2000 against the

Petitioners which resulted after investigation shaping in the manner of filing of the charge-sheet, taking the cognizance by the Court vide Annexure-3 as to whether the proceedings in hand can be quashed? It has been stressed by the learned Counsel for the Petitioner that suit for divorce which was preferred by Respondent No. 2 u/s 13 of Hindu Marriage Act was decreed on 19.8.2002. Even application for maintenance u/s 125, Code of Criminal Procedure which was moved by Respondent No. 2 was got dismissed as withdrawn since the parties have already mutually sorted out their relations and all their disputes and differences amicably out of the Court and they want to live peacefully and with amity. The marriage between them already stands dissolved by a decree of divorce. Even the criminal complaint which was filed by Respondent No. 2 vide Criminal Complaint Case No. 11 of 2001 u/s 494, 495, 109, I.P.C. which was pending in the Court of Special Chief Judicial Magistrate, Allahabad, as per orders of the Court dated 5.10.2002 vide Annexure-7 has already been got dismissed by Respondent No. 2 as not pressed, since the parties have entered into compromise and the Petitioners were discharged u/s 245(2), Cr. P.C., as such, at this stage, summoning the Petitioners in Criminal Case No. 464 of 2001 arisen out of Criminal Case No. 240 of 2000 under Sections 323, 504, 498A, I.P.C. read with Section 3/4 of Dowry Prohibition Act, P.S. Ghazipur, district Lucknow, pending in the Court of Special Chief Judicial Magistrate (Customs) would be a sham and no useful purpose will be served and as such, in the interest of justice, criminal proceeding pending be quashed. It is, however, to be borne in mind that in the present case, the Petitioners have not sought compounding of the offences for which they have been summoned rather they had approached this Court u/s 482, Cr. P.C. seeking quashing of criminal proceedings mentioned above.

11. While hearing the learned Counsel for the parties and in the peculiar circumstances of the present case, this Court feels that for the purposes of securing the ends of justice and in the present facts and circumstances of the case, Section 320, Cr. P.C. 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. Section 320, Cr. P.C. does not limit or affect the powers of the Court u/s 482, Cr. P.C.

12. While hearing the learned Counsel for the parties, learned A.G.A. submits that criminal proceedings of the court below cannot be quashed u/s 482, Cr. P.C. neither Section 498A, Cr. P.C. is compoundable.

13. It is well-settled that the powers u/s 482, Cr. P.C. have no limits. Of course, where there is more power, it becomes more necessary to exercise it with utmost care and caution while invoking such power. Exercise of such power would depend upon the facts and circumstances of each case but with sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

14. The Apex Court in judgment in B.S. Joshi and Others Vs. State of Haryana and Another, , almost in peculiar facts and circumstances as in the present case

has laid down that "if for the purpose of securing the ends of justice, quashing of F.I.R. becomes necessary, Section 320 would not be a bar to the exercise of power of quashing".

Their lordships further observe that "if it is noticed that there was no reasonable likelihood of the accused being convicted of the offence where in a case the wife does not support the imputation made in the F.I.R. of the type in question".

Their lordships of the Apex Court in their above judgment had further observed that "there may be many reasons for not supporting the imputation. It may be either for the reason that she has resolved the disputes with her husband and his other family members and as a result thereof she had again started living with her husband with whom she had earlier differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of the parties or failed to support the prosecution on some other similar grounds. In such eventuality there would also be no chance of conviction. Would it then be proper to decline to exercise the power of quashing on the ground that it would be permitting the parties to compound the non-compoundable offences? The answer clearly has to be in the negative".

15. Here in the present case, I find that Smt. Puneeta Mehrotra (now Ms. Puneeta Capoor) opposite party No. 2 had sought decree of dissolution of marriage vide Annexure-4 u/s 13 of Hindu Marriage Act. She has withdrawn the application of maintenance u/s 125, Cr. P.C. of her own free will on the ground that parties have entered into amicable negotiations and even complaint filed by her vide Complaint Case No. 11 of 2001, Smt. Puneeta Mehrotra v. Vivek Mehrotra and Ors. under Sections 494, 495, 109, I.P.C. which was pending in the Court of C.J.M., Allahabad, was got dismissed as not pressed vide Court's order dated 5.10.2002 vide Annexure-7 to the petition. It clearly comes out that the parties have negotiated their grievances outside the Court, as such, I do not find it proper in the interest of justice to permit the prosecution of Criminal Case No. 464 of 2001 under Sections 323, 504, 498A, I.P.C. and Section 3/4 Dowry Prohibition Act, P.S. Ghazipur, district Lucknow pending in the Court of Special Chief Judicial Magistrate (Custom), Lucknow to continue.

16. I am also of the view in the above said circumstances that chances of ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing the criminal proceedings to continue and as such in the special facts and circumstances of the present case the proceedings cannot be allowed to continue.

17. The Apex Court in the above quoted judgment, while considering the case of G.V. Rao v. L.H.V. Prasad, 2000 (1) ACrR 766 (SC): (2000) 3 SCC 693, has held that "there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes

suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

Their Lordships in the above case further held that "there is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code".

18. As held by the Apex Court referred to above and in the peculiar facts and circumstances of the present case, where parties have settled themselves in their life, all the matters have resulted in amicable settlement between the parties. In the counter-affidavit filed in the present petition by opposite party No. 2, who was wife of Petitioner No. 1, she has herself stated in para 5 which has been reproduced above that charge-sheet and criminal proceedings arising out of Crime No. 240 of 2000 be quashed as prayed by the Petitioners to advance the cause of justice and she has no objection to it and the present petition be allowed.

19. In view of the discussions made hereinabove, this Court under inherent powers u/s 482, Cr. P.C. allow this petition and quash the criminal proceedings arising out of Crime No. 240 of 2000 which resulted in filing of the charge-sheet and case proceedings of Criminal Case No. 464 of 2001, State v. Vivek Mehrotra and Ors. under Sections 323, 504, 498A, I.P.C. and Section 3/4 Dowry Prohibition Act, P.S. Ghazipur, district Lucknow pending in the Court of Chief Judicial Magistrate (Customs), Lucknow.