
(2003) 03 BOM CK 0057
In the Bombay High Court
Case No : Criminal Application No. 35 of 2003

Wasudeo Dalal and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2003) BomCR(Cri) 1586 : (2003) 3 MhLj 44

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : R.P. Joshi, for the Appellant; Sonare, Assistant Public Prosecutor for Respondent No. 1 and V.R. Choudhari, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Rule, Rule taken up forthwith for final hearing with the consent of the parties.

2. Heard Shri Joshi, learned counsel for the applicants and Shri Sonare, Additional Public Prosecutor for the respondent No. 1 and Shri Choudhari, learned counsel for the respondent No. 2.

3. This is a petition filed u/s 482 of Code of Criminal Procedure, 1973 seeking quashing of Criminal Case No. 304 of 1997 awaiting disposal in the Court of learned Judicial Magistrate First Class, Nagpur, arising out of Crime No. 223/1997 for the offences punishable u/s 498-A read with 34 of Indian Penal Code.

4. It is not disputed that the applicant No. 1 is the husband, applicant nos. 2 and 3 are the father-in-law and mother-in-law respectively, applicant No. 4 is the brother-in-law and applicant No. 5 is the sister-in-law of respondent No. 2 Sandhya Dahake. It is not disputed that the respondent No. 2 had lodged First Information Report on 27-8-1997 at police station, Pratap Nagar, Nagpur and on the basis of which offences punishable u/s 498-A read with 34 of Indian Penal

Code, vide Crime No. 223/1997 was registered and after usual investigation charge-sheet against all the accused was filed in the Court of Judicial Magistrate First Class on 29-9-1997. It is also not disputed that Hindu Marriage Petition seeking divorce u/s 13 of Hindu Marriage Act, 1955 was filed by respondent No. 2 wife in the Family Court, Nagpur, which came to be allowed and the marriage between respondent No. 2 and applicant No. 1 has been dissolved by a decree of divorce by mutual consent. It is also not disputed that on 20th March, 2001 during the pendency of the divorce petition, there was amicable settlement between spouses which was reduced into writing and in that compromise deed, it was mentioned in Clause 6 that both spouses would assist each other in not prosecuting Criminal case No. 304/1997 u/s 498-A of Indian Penal Code awaiting disposal in the Judicial Magistrate First Class Court No. 9.

4. The learned counsel for the applicants contended that spouses have compromised their disputes and the compromise deed was reduced into writing and produced it in the Family Court and now it would be futile exercise to proceed with the trial. He contended that the spouses have separated since 30th March, 2001 by virtue of decree of divorce and now a period of one and half years has elapsed since the date of judgment of divorce by mutual consent. He contended that in the interest of justice, it is desirable that the Criminal Case pending against the applicants for the offence punishable u/s 498-A of Indian Penal Code be quashed. In support of his submission, he relied on the decision of Delhi High Court in case of Satish Gathwal and Ors. v. State and Anr., reported in 1999 (1) Cri 16, also on the decision of Punjab & Haryana High Court in case Sudesh Kumari and Ors. v. State of Punjab and Ors., reported in 1999 (1) Cri 69 and on the decision of Division Bench of Apex Court in case of G.V. Rao v. L. H. V. Prasad, reported in : 2000 CriLJ 3487 .

5. The learned counsel for the respondent No. 2 -- wife has no objection if Criminal proceeding bearing Criminal Case No. 304/1997 is quashed.

6. The learned Additional Public Prosecutor opposed for quashing of Criminal proceedings of Criminal Case No. 304/1997 and contended that wife should enter in the witness box and after recording her evidence, the Court has to come to the conclusion as to whether applicants-accused are guilty of the offence punishable u/s 498-A read with 34 of Indian Penal Code. He further contended that Section 498-A of Indian Penal Code is not compoundable and therefore, criminal proceedings may not be quashed.

7. I have given thoughtful consideration to the contentions of the learned counsel appearing for the parties. It is not disputed that the spouses arrived at compromise on 20th March, 2001 during the pendency of divorce petition and this compromise was reduced into writing.

8. The Punjab & Haryana High Court in case of Sudesh Kumari and Ors. reported in 1999(1) Cri 69 (cited supra) has observed in para No. 4 as under:--

"In view of the statements made by Sukhdev Choudhary and Neelam, if the

criminal proceedings are allowed to continue that would be an exercise in futility especially when the aggrieved parties are not going to support prosecution version contained in the FIR. That would also amount to abuse of process of law, wastage of money and public time which would not be in the interest of justice. Therefore, I am of the view that the impugned FIR deserves to be quashed, accordingly the same is quashed."

9. The Delhi High Court while dealing with similar situation in the case of Satish Gathwal and Ors. v. State and Anr. reported in 1999 (1) Cri 16, has observed as under:--

"The respondent-wife in her statement made on September, 25, 1996 had very categorically stated that due to intervention of friends and relations and well-wishers, it had been decided that the parties will have their marriage dissolved by a decree of divorce by mutual consent; the petitioner No. 1 shall pay her a total sum of Rs. 8.00 lakhs by way of return of her dowry articles, stridhan, past and future maintenance and on receipt of the said amount, she will have no claim of whatsoever nature against any of the petitioners. Out of that, a sum of Rs. 5.00 lakhs was paid before the Court when this statement was made on 25-9-1996. Out of the balance amount of Rs. 3.00 lakhs, Rs. 1.00 lakh was agreed to be paid at the time of recording of the statement in the petition for divorce this amount has already been paid. And the amount of Rs. 2.00 lakhs was agreed to be paid to her at the time of grant of decree of divorce. Rs. 6.00 lakhs have thus already been paid to the wife on being directed by this Court; Rs. 2.00 lakhs have been deposited in this Court. Learned Counsel for the petitioners has stated that the petitioners will have no claim on this amount and this may be paid to the respondent-wife provided that she consents and joins for mutual divorce". (Para 10)

"In my view, it is just, proper and otherwise to secure the ends of justice to exercise jurisdiction u/s 482 of the Code and quash the Criminal proceedings." (Para 12)

10. In that case, undertaking was also given by a wife that she will not pursue her complaint and on the basis of this, the Delhi High Court held that "where wife in an agreement with her husband agreed to get her complaint u/s 498-A and 406 of Indian Penal Code. Quashed and accepted an amount from husband in package deal for divorce as well for quashing the criminal proceedings, she was estopped in law from withdrawing her undertaking and it would be a fit case to quash proceedings in exercise of power u/s 482, Criminal Procedure Code."

11. In G. V. Rao v. L.H. V. Prasad and Ors. (cited supra) Hon"ble Apex Court observed in para 12 as under :--

"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 counseled 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."

12. Clause 6 of the compromise pursis reads as under :--

"plaintiffs and defendants and all other relatives would assist each other in not prosecuting the criminal case u/s 498-A of Indian Penal Code, awaiting disposal in the judicial Magistrate First Class No. 9." (Translated for convenience)

In the present case the compromise deed was not only reduced into writing but it was presented before the Family Court and the learned Judge of the Family Court in her judgment dated 30th March, 2001 also recorded terms and conditions mentioned in the compromise deed. "It has been mentioned in para 5 that the petitioner No. 1-wife has vowed in her evidence before the Court that she would co-operate in the case pending before the learned J.M.F.C. u/s 498-A of Indian Penal Code for the result in favour of the petitioner No. 2. So also, the petitioner No. 2 has agreed to pay Rs. 25,000/- to the petitioner No. 1, which she received towards past, present and future maintenance".

13. Thus, it would clearly reveal that the parties acted on the terms and conditions of the compromise and the wife has no objection to quash the criminal proceedings against all the applicants for the offence punishable u/s 498-A of Indian Penal Code. The ratio laid down by the Hon'ble Apex Court is squarely applicable to the facts and circumstances of the present case and having regard to the material brought on record, I am of the considered view that proceedings with the criminal trial would be futile exercise, and especially when the wife is not going to support the version contained in F.I.R. Proceeding with trial would also amount to abuse of the process of law, wastage of money and public time which would not be in the interest of justice. In such situation, contention of the learned A.P.P. that the offence punishable u/s 498-A of Indian Penal Code is not compoundable and F.I.R. and criminal prosecution may not be quashed, is without any substance. This Court in order to secure the ends of justice is clothed with power u/s 482 of Code of Criminal Procedure to quash the criminal proceedings. In that view of the matter, the petition is allowed. The prosecution of criminal case No. 304/97 pending before the learned 9th Judicial Magistrate First Class arising out of Crime No. 223/1997 for the offences punishable u/s 498-A read with 34 of Indian Penal Code is hereby quashed and the applicants-accused are acquitted of the charge levelled against them. Their bail bonds stand discharged. Rule is made absolute.