

Allahabad High Court

Shiv Dayal Singh & Ors. vs State Of U.P. And Anr. on 23 June, 2021

Bench: Narendra Kumar Johari

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No. - 23

Case :- U/S 482/378/407 No. - 6822 of 2017

Applicant :- Shiv Dayal Singh & Ors. Opposite Party :- State Of

U.P. And Anr. Counsel for Applicant :- Udai Bhan Pandey

Counsel for Opposite Party :- Govt. Advocate, Mahfooz Alam

Hon'ble Narendra Kumar Johari, J.

1. Case is taken up through video conferencing.
2. Heard Shri Udai Bhan Pandey, learned counsel for the applicants, learned A.G.A. for the State as well as Shri Mahfooz Alam, learned counsel for opposite party NO.2 through video conferencing and perused the record.
3. This petition under Section 482 Cr.P.C. has been filed for quashing of impugned summoning order dated 04.09.2016, passed by learned Additional Chief Judicial Magistrate-VIII, Lucknow. A further prayer has also been made for quashing of the proceedings of Case NO.2445 of 2016, relating to Case Crime NO.216 of 2015, under Sections 498-A, 323, 504 IPC and Section 3/4 Dowry Prohibition Act, Police Station Naka Hindola, District Lucknow, Charge-sheet dated 04.09.2016 (State Vs. Ram Nandini and others), pending in the Court of Additional Chief Judicial Magistrate-VIII, Lucknow.
4. Briefly, the facts of the case are that marriage of petitioner NO.1 WAS solemnized with complainant/opposite party NO.2 on 28.05.2011. Thereafter, relation between husband and wife got strained, as a result opposite party NO.2, who is the wife of petitioner NO.1, lodged an F.I.R. against the petitioners under Crime NO.216 of 2015, under Sections 498-A, 323, 504 IPC and Section 3/4 D.P. Act, Police Station Naka Hindola, District Lucknow, in which, after investigation the police filed

charge-sheet against the petitioners. The learned Magistrate after taking cognizance passed the impugned summoning order dated 04.09.2016. Aggrieved by the summoning order, the petitioners have filed present petition under Section 482 Cr.P.C.

5. Learned counsel for the applicants/petitioners has submitted that dispute was in between the husband and wife. Consequently, the F.I.R. was lodged by the opposite party NO.2 WITH exaggeration. Subsequently, during the pendency of the proceedings, by the intervention of respectable persons of the society, a compromise between the parties has taken place. The deed of compromise is annexed as Annexure with the affidavit dated 04.02.2020. In furtherance of compromise, both the parties have separated with each other and in this regard a decree of divorce has also been passed by the learned Principal Judge, Family Court, Lucknow in Original Case No.3640 of 2019 (Smt. Khushbu Chauhan Vs. Shiv Dayal Singh), under Section 13-B of Hindu Marriage Act, 1955. Learned counsel for the petitioners/applicants has further submitted that vide order dated 16.03.2021, the matter was directed to be placed before the Senior Registrar for verification of compromise and vide order dated 25.03.2021 the compromise deed has been verified by the Senior Registrar.

6. Learned counsel for the opposite party NO.2 has submitted that the parties have settled their dispute amicably. No grievance is left with each other. Learned counsel for opposite party NO.2 has further submitted that considering the compromise and satisfaction of opposite party NO.2, if the proceedings of the case are quashed/set aside at this stage, opposite party NO.2 WILL have no objection. Learned A.G.A. has also not disputed the prayer.

7. The scope and ambit of the power conferred in the High Court in the particular context of prayer for quashing of criminal proceedings, was examined by the Hon'ble Supreme Court as well as by this Court in several cases.

8. In case of Dinesh Sharma and others vs. State of U.P. and others, [2017 (Suppl.) ADJ 613], the coordinate Bench of this Court has laid down the legal position that civil disputes as well as matrimonial dispute between private parties and criminal matter which have no grave effect, can be quashed on the basis of compromise. The relevant paragraph 7 of the judgment is reproduced herein below : -

"7) A perusal of the case law referred herein above makes it very clear that the Hon'ble Supreme Court has lent its judicial countenance to the exercise of inherent jurisdiction in such matters so that the abuse of the court's process may be averted. Even in the cases which involved non compoundable offences their quashing has been approved by the Apex Court if the nature of the offence is such which does not have grave and wider social ramifications and where the dispute is more or less confined between the litigating parties. A criminal litigation emanating from matrimonial dispute has been found to be the proceedings of the same class where the inherent jurisdiction of this court may be suitably exercised if the parties inter-se have mutually decided to bury the hatchet and settle the matter amicably in between them. There are many other litigations which may also fall in the same class even though they do not arise out of matrimonial disputes. Several disputes which are quintessentially of civil nature and other criminal litigations which do

not have grave and deleterious social fall-outs may also be settled between the parties. In such matters also when parties approached the court jointly with the prayer to put an end to the criminal litigations in which they had formerly locked their horns, or if the record or the mediation centre's report indicates a rapprochement in between the parties, the Court in the wider public interest may suitably exercise its power and terminate the pending proceedings. Such positive exercise of the inherent jurisdiction can also find its vindication in a more pragmatic reason. When the complainant of a case or the victim of the offence itself expresses its resolve not to give evidence against the accused in the back drop of the compromise between the parties inter-se or if the fact of inter-se compromise in between the parties is apparent on the face of record, and they are still called upon to depose in the court, they in all probability, go back on their words and resile from their previous statements, the truthfulness of which is best known only to themselves. They are in such circumstances very likely to eat their words and perjure themselves. The solemn proceedings of the court often get reduced to a sham exercise and farce in such circumstances. The proceedings can hardly be taken to their logical culmination and in such circumstances, the prospect of the conviction gets lost. In all probability, the trial becomes a futile exercise in vain and the precious time of court is attended with nothing except a cruel wastage. Of course, there are crimes which are the offences against the State and the inter-se compromise between the litigants cannot be countenanced with and the court despite the rapprochement arrived at in between the parties, would still not like to terminate the prosecution of the culprits. There are crimes of very grave nature entailing far reaching deleterious ramifications against the society. In those matters, the courts do not encourage either mediation or a compromise through negotiation and even the Apex Court has carved out exceptions and did not approve the quashing of non-compoundable offences regardless of their gravity. The Courts have to be discreet and circumspect and must see whether the exercise of inherent jurisdiction is indeed serving the ends of justice or to the contrary defeating the same."

9. In the case of B.S. Joshi and others vs. State of Haryana and others, (2003) 4 SCC 675, the Hon'ble Supreme Court by discussing earlier decisions has discussed the principles to protect ends of justice, particularly in context with matrimonial dispute. Relevant paragraphs of the judgment are reproduced herein below :-

"12) The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13) The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad & Ors. [(2000) 3 SCC 693] are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said 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.

14) There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498-A 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 hypertechnical view would be counter productive 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 XXA of Indian Penal Code.

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."

10. In the case of Najmul Hasan and others vs. State of U.P. and others [2018 (7) ADJ 245], this Court has observed in paras 15 & 16 as under: -

"15) Considering the compromise arrived at between the parties on 07.05.2018, as extracted above in paragraph 5 and the categorical stand of the opposite party No.3 before this Court, we are of the considered opinion that no useful purpose would be served in continuation of criminal proceedings in pursuance of the impugned First Information Report lodged by opposite party No.3. Accordingly, it would be appropriate, in the facts and circumstances of the case, to quash the impugned First Information Report as continuation of the proceedings of the First Information Report would be a futile exercise.

16) We, therefore, allow the writ petition and quash the proceedings of the First Information Report dated 14.09.2017, vide Case Crime No.0404 of 2017, under Sections 498-A, 323, 377, 506 of Indian Penal Code and Section of Dowry Prohibition Act, 1961 at Police Station Saadatganj, District Lucknow, lodged by Smt.Anjum Rizvi-the opposite party No.3."

11. In case of Jitendra Raghuvanshi and others vs. Babita Raghuvanshi and others, [2013 (4) ADJ 40], the Hon'ble Supreme Court has again reiterated the findings as laid down in the case of B.S. Joshi (Supra). Relevant paragraphs 12 & 13 of the judgment are reproduced herein below :-

"12) 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.

13) 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."

12. In the case of Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat and another [2012 CJ (SC) 896], the Apex Court has held in para 9 that if the cases are non compoundable under Section 320 Cr.P.C., even then such a criminal matter can be quashed on the basis of mutual compromise where the chance of conviction is bleak. The relevant para 9 of the case is reproduced as under :-

"9. On going through the factual details, earlier decision, various offences Under Section 320 of the Code and invocation of Section 482 of the Code, we fully concur with the said conclusion. In the case on hand, irrespective of the earlier dispute between Respondent No. 2-THE complainant and the Appellant being Accused No. 3 as well as Accused Nos. 1 and 2 subsequently and after getting all the materials, relevant details etc., the present Appellant (Accused No. 3) sworn an affidavit with bona fide intention securing the right, title and interest in favour of Respondent No. 2 HEREIN-THE Complainant. In such bona fide circumstances, the power Under SECTION 482 may be exercised. Further, in view of the settlement arrived at between Respondent No. 2-THE complainant and the Appellant (Accused No. 3), there is no chance of recording a conviction insofar as the present Appellant is concerned and the entire exercise of trial is destined to be an exercise in futility. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power Under Section 482 of the Code even in offences which are not compoundable Under Section 320, may quash the prosecution. However, as observed in Shiji (supra), the power Under Section 482 has to be exercised sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In other words, the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law."

13. The co-ordinate Bench of this Court in the case of Ashish Chand Vs. State of U.P. and Ors. (Application U/S 482 No. 31052 of 2019 decided on 13.8.2019) has held that the charge sheet of criminal case can be quashed on the basis of mutual settlement. The relevant paras of the case are reproduced as under : -

"12. THE Apex Court recently in a judgment dated 5.3.2019 rendered by a Bench of three Hon'ble Judges in case of State of Madhya Pradesh Vs. Laxmi Narayan and others [2019 (AIR) SC 1296] considering previous judgments and section 320 Cr.P.C. has laid down guideline for exercising the jurisdiction under Section 482 Cr.P.C. in case of settlement of dispute between the accused and complainant. The para 13 of the said judgment is reproduced herein-below:

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc., which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact

on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

13. Considering the facts and circumstances of the case, as on date in the light of dictum and guideline laid down by the Apex Court as mentioned above, I think the interests of justice would be met, if the prayer of parties is acceded to and the criminal proceedings and other litigation between the parties is brought to an end.

14. On making settlement between the parties in a matrimonial dispute, the chance of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution against the applicants to continue.

15. In view of the above, the charge-sheet No. 41 of 2015 dated 15.2.2015 in Case No. 2686 of 2016 arising out of Case Crime No. 183 of 2014 under Sections 498A, 323 IPC, P.S.-Mahila Thana, District-Ghaziabad, pending in the court of Additional Chief Judicial Magistrate-VIII, Ghaziabad, is hereby quashed."

14. The Apex Court in the case of *Shiji @ Pappu and Ors. Vs. Radhika and another* [2011 CJ (SC) 239] has scrutinized the legal position in case of compromise in criminal cases in which the dispute was private in nature and continuation of proceeding will be sheer abuse of process of law and in this context the technicality should not be allowed to stand in the way of quashing criminal proceeding. Although the power should be used by the court sparingly. It has been held by Apex Court by referring the previous judgments that :

"11. That brings to the decision of this Court in *Madan Mohan Abbot'* case (supra) whereby the High Court had declined the prayer for quashing of the prosecution for offences punishable under Sections 379, 406, 409, 418, 506/34 IPC despite a compromise entered into between the complainant and the accused. The High Court had taken the view that since the offence punishable under Section 406 was not compoundable the settlement between the parties could not be recognized nor the pending proceedings quashed. This Court summed up the approach to be adopted in such cases in the following words:

"6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

7. We see from the impugned order that the learned Judge has confused compounding of an offence with the quashing of proceedings. The outer limit of Rs 250 which has led to the dismissal of the

application is an irrelevant factor in the later case. We, accordingly, allow the appeal and in the peculiar facts of the case direct that FIR No. 155 dated 17-11-2001 PS Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed."

12. To the same effect is the decision of this Court in *Nikhil Merchant v. CBIMANU*/SC/7957/2008 : 2008 (9) SCC 677 where relying upon the decision in *B.S.Joshi* (supra), this Court took note of the settlement arrived at between the parties and quashed the criminal proceedings for offences punishable under Sections 420, 467, 468 and 471 read with Section 120B of IPC and held that since the criminal proceedings had the overtone of a civil dispute which had been amicably settled between the parties it was a fit case where technicality should not be allowed to stand in the way of quashing of the criminal proceedings since the continuance of the same after the compromise arrived at between the parties would be a futile exercise. We may also at this stage refer to the decision of this Court in *Manoj Sharma v. State and Ors.* MANU/SC/8122/2008 : (2008) 16 SCC 1. This Court observed:

"8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first formation report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter.

9. As we have indicated herein before, the exercise of power under SECTION 482 Code of Criminal Procedure of Article 226 of the Constitution is discretionary to be exercised in the facts of each case. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility."

13. 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 Code of Criminal Procedure. 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 in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Code of Criminal Procedure. 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 Code of Criminal Procedure. are not for that purpose controlled by Section 320 Code of Criminal Procedure. Having said so, we must hasten to add that the plenitude of the power under Section 482 Code of Criminal Procedure. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High

Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse Not the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Code of Criminal Procedure. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."

15. Since, parties of the present case have amicably settled their disputes which arose due to matrimonial relation, in such a situation it will be futile to engage them in further litigation. After getting relief from legal proceedings both the parties, i.e. applicants and opposite party NO.2 may live their life with their own choice. In present scenario, the chance of ultimate conviction is also bleak and, therefore, no useful purpose is likely to be served by allowing criminal proceedings against the applicants. It may be sheer wastage of valuable time of court also.

16. In view of the above facts and circumstances, and in the light of dictum of Hon'ble Apex Court and of this Court, the proceedings of the Case NO.2445 of 2016 (State Vs. Ram Nandini and others), relating to Case Crime NO.216 of 2015, under Sections 498-A, 323, 504 IPC and Section 3/4 Dowry Prohibition Act, Police Station Naka Hindola, District Lucknow, Charge-sheet dated 04.09.2016 (State Vs. Ram Nandani and others), pending in the Court of Additional Chief Judicial Magistrate-VIII, Lucknow are hereby set aside.

17. The instant petition filed under Section 482 Cr.P.C. is, accordingly, allowed.

Order Date :- 23.6.2021 ML/-