

Court No. - 23

Case :- U/S 482/378/407 No. - 944 of 2020

Applicant :- Smt. Khushbu Chauhan & Ors.

Opposite Party :- State Of U.P. & Anr.

Counsel for Applicant :- Mahfooz Alam

Counsel for Opposite Party :- G.A., Udai Bhan Pandey, Vijay Kumar Tripathi

Hon'ble Narendra Kumar Johari, J.

1. Case is taken up through video conferencing.
2. Heard Shri Mahfooz Alam, learned counsel for the applicants, learned A.G.A. for the State as well as Shri Udai Bhan Pandey, 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 the proceedings of Complaint Case No.4269 of 2016 (Shiv Dayal Singh Vs. Khushbu Singh and others), under Sections 323, 379, 504 IPC, Police Station Hasanganj, District Unnao, pending in the Court of Chief Judicial Magistrate, Unnao.
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 husband of petitioner no.1, filed a Complaint Case No.4269 of 2016 (Shiv Dayal Singh Vs. Khushbu Singh and others), under Sections 323, 379, 504 IPC in the Court of Additional Chief Judicial Magistrate-II, Unnao, in which the learned Magistrate passed summoning order dated 12.02.2016. 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 there was a matrimonial dispute in between the husband and wife. Consequently, the complaint was filed by the opposite party No.2 with exaggeration and false fact. Subsequently, during the pendency of the proceedings, by the intervention of respectable persons of the society, a compromise between the parties has taken place in between the parties. The deed of compromise is annexed as Annexure No.1 with this petition. 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 complaint case are quashed 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 :

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"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. 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 wherethe 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 information 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. 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. applicant No.1 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.

14. 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 Complaint Case No.4269 of 2016 (Shiv Dayal Singh Vs. Khushbu Singh and others), under Sections 323, 379, 504 IPC, Police Station Hasanganj, District Unnao, pending in the Court of Additional Chief Judicial Magistrate-II, Unnao are hereby set aside.

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

Order Date :- 23.6.2021

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