Sachin and Others Vs. State and Another

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Court : Delhi

Decided On : Sep-30-2016

Judge : P.S. Teji

Appeal No. : CRL.M.C. No. 303 of 2016

Appellant : Sachin and Others

Respondent : State and Another

Judgement :

P.S. Teji, J.

1. By this petition filed under Section 482 of Cr. P.C. the petitioner is seeking quashing of FIR No. 927/2007, registered under Section 498-A/406/34 of IPC at Police Station Saraswati Vihar, Delhi.

2. In nutshell, the case of the petitioner is that the marriage of the petitioner was solemnized with respondent No. 2 on 09.02.2007 as per Hindu Rites and Ceremonies at Delhi and from 11.02.2007, respondent No. 2 started living separately. They did not cohabitate with each other since the date of their separation and there is no issue out of his wedlock. On lodging a complaint by respondent No. 2 which was registered as FIR No. 927/2007, the trial began. Even efforts were made by elders and relatives of both the sides to sort out and reconcile the disputes between them but TO no avail.

3. At the time of filing an application for seeking anticipatory bail, both the parties agreed to settle their dispute amicably. Accordingly a settlement according to which the petitioner agreed to pay a sum of Rs.4.5 lacs to respondent No. 2 for past, present and future maintenance, permanent alimony, dowry, istridhan articles, etc. A statement to this effect was also recorded before the learned Additional Sessions Judge. The settlement was later on modified on 11.12.2007 and the one time alimony was reduced from 4.5 to 4.25 lacs. Both the parties decided to dissolve their marriage through mutual consent and get the FIR quashed.

4. It is further contention of the petitioner that he had paid a sum of Rs.2 lacs at the time of grant of anticipatory bail; and further sum of Rs. 1 lac on 09.09.2008 at the time of recording of statement in the first motion and another sum of Rs.1 lac at the time of recording statement in second motion on 25.09.2008. The balance of Rs.25,000/- was to be paid at the time of making statement before this Court for quashing the FIR.

5. It is further contention of the petitioner that the decree of divorce between the petitioner and respondent No. 2 has been passed and now both the parties are leading their independent life. That both the parties have re-married and are settled happily in their present family life. But the proceedings under Section 498-A/406/34 of IPC are still pending before learned Metropolitan Magistrate, Rohini Courts, Delhi. It is the further contention of the petitioner that respondent No. 2 is not attending the Court proceedings since the date of passing of decree of divorce. It is only during the proceedings before the learned Metropolitan Magistrate the petitioner was advised to prefer the present petition for quashing of the FIR before this Court.

6. In the aforesaid facts and circumstances, the petitioner contended that the marriage between the parties has been irretrievably broken and the marriage has already been dissolved by decree of divorce with mutual consent, even the claims have been fully settled between the parties, there is no purpose of continuing the criminal proceedings emanating from the FIR in question. It is further submitted that the petitioner Nos.2 to 6 are the parents, brother and sister in law of

respondent Nos. 2 and are not concerned with the difference between the petitioner No.1 and respondent No. 2. At last, the petitioner has prayed for quashing of the FIR in question as no fruitful purpose would be served in continuing the proceedings emanating from the FIR in question.

7. In support of the aforesaid submissions, the learned counsel for the petitioner has referred to the judgment of this court in Crl. M.C. No.3230-32/2006 titled as Purshotam Gupta and Ors. Vs. State and Anr, decided on 23.01.2008. Learned counsel for the petitioner further contended that the said judgment also referred the judgment of the Apex Court in Ruchi Agarwal vs. Amit Kumar Agrawal and Others, (2005) 3 SCC 2009 and Mohd. Shamim vs. Nahid Begum (Smt.), (2005) 3 SCC 302, in which on the similar facts, where the complaint under Section 498A/406/34 was filed by the complainant, later divorce by mutual consent was obtained, terms of the settlement were also complied with and the payment made by the petitioner were encashed by the respondent (wife), but she was not coming forward for quashing of the FIR. In those judgments, the Hon ble Apex Court had quashed the FIRs.

8. On 25.01.2016, the present petition was taken up for hearing when the notice was directed to be issued to respondent No. 2 for 02.05.2016. As per service report, the notice issued to respondent No. 2 was awaited and fresh notices were ordered to be issued for 17th August 2016. The report in respect of notice issued for that date was to the effect that no such person is residing at the given address. Learned counsel for the petitioner requested for that the petition be heard finally on the basis of the settlement arrived at between the parties; the decree of divorce by mutual consent was obtained from the competent Court; both the parties have remarried and the fact that the respondent No. 2 (wife) is not contesting her complaint before the Trial Court. Perusal of the petition itself reveals that no other specific ground has been raised by the petitioner for exercising the inherent powers under Section 482 of the Cr.P.C. by this Court.

9. In Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Others, AIR 2008 SC 251, the Apex Court held as under:

Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

10. So far as the cases relating to quashing of complaint/FIR are concerned, the Hon ble Supreme Court has already framed the guidelines/principles for quashing the complaints/FIR, in a landmark judgment in State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., 1992 SCC Supl. (1) 335, which have been reiterated in a recent judgment of the Supreme Court in Criminal Appeal No. 773 of 2003, titled as Sundar Babu and Ors. vs. State of Tamil Nadu decided on 19.02.2009, the extracts of which are reproduced hereunder:

Though the scope for interference while exercising jurisdiction under Sec.482 Cr.P.C. is limited, but it can be made in cases as spelt out in the case of Bhajan Lal. The illustrative examples laid down therein are as follows:

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Sec.156(1) of the Code except under an order of a Magistrate within the purview of Sec.155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Sec. 155 (2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. The Hon ble Supreme Court further went on to observe as under:

The parameters for exercise of power under Sec.482 have been laid down by this Court in several cases. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances, under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

It is neither possible nor desirable to lay down any inflexible rule, which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section, which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal

possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action, which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

As noted above, the powers possessed by the High Court under Sec.482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

12. From the submission made on behalf of the petitioner, this Court does not find even a single averment to the effect that the allegations made in the FIR do not constitute or make out any case against the petitioner or that there is no evidence

against the petitioner regarding commission of a cognizable offence. The petitioner has also not contended that the allegations made in the FIR are so absurd or improbable or the fact that the criminal complaint filed against the petitioner is manifestly attended with mala fide or the proceedings are maliciously instituted with an ulterior motives for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge.

13. In the light of the aforesaid facts and circumstances and the foregoing discussions on the principles relating to exercise of inherent powers under Section 482 of Cr.P.C., this Court does not find the present case being fit for exercising the inherent powers under Section 482 of Cr.P.C. in the present case. Finding no merit in the present petition, the present petition is dismissed.

14. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the present petition. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of Crl fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

15. In view of the aforesaid discussions, the present petition filed by the petitioner is dismissed.