

Vijay Kumar and Others Vs. State and Others

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Court : Delhi

Decided On : Sep-01-2016

Judge : P.S. Teji

Appeal No. : CRL.M.C. No. 2542 of 2016

Appellant : Vijay Kumar and Others

Respondent : State and Others

Judgement :

P.S. TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioners, namely, Sh. Vijay Kumar and Sh. Mangat Ram for quashing of FIR No.250/2014 dated 18.04.2014, under Sections 498- A/307/34 IPC registered at Police Station Gandhi Nagar on the basis of the Mediation Report of the Delhi Mediation Centre, Karkardooma Courts, Delhi executed between petitioner no. 1 and respondent no.2, namely, Smt. Mamta on 24.01.2015.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent No.2, present in the Court has been identified to be the complainant/first-informant of the FIR in question by her counsel.

3. The factual matrix of the present case is that the marriage was solemnized between the petitioner no.1 and respondent no.2 on 08.05.1998 according to Hindu rites and customs. Out of the said wedlock, two female children were born. It is the case of the complainant that the accused persons used to harass and beat her. The accused persons were not happy with the complainant as she gave birth to two daughters and not sons. Allegedly, the accused persons poured kerosene oil upon the complainant and tried to set her ablaze.

Thereafter, the complainant got lodged the complaint following which the FIR in question was registered against the petitioners. During the pendency of the proceedings, the matter was settled between the accused persons and respondent no.2.

4. Respondent No.2 present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement, it is agreed that the parties shall dissolve their marriage by way of mutual consent. It is agreed that petitioner no.1 shall transfer (a) the plot bearing no.169, Pocket-D, sector 4-C, Shatabadi Nagar, Meerut (UP); (b) plot bearing no.136, Pocket-D, sector 4-C, Shatabadi Nagar, Meerut (UP) and (c) Shop no. X/916, Chand Mohalla, Gandhi Nagar, Delhi in favour of respondent no.2 as well as two daughters namely Disha and Prachi, towards full and final settlement of all the claims arising out of the marriage which includes maintenance (past, present and future) of respondent no.2 as well of the children, permanent alimony, istridhan etc. It is agreed that petitioner no.1 shall handover the title documents in respect of shop no. X/916, Chand Mohalla, Gandhi Nagar, Delhi in favour of respondent no.2 and minor daughters at the time of quashing of the FIR in question before this court, which shall be filed by the concerned party within 15 days after passing of the order of second motion and the concerned party shall co-operate at the time of such quashing. It is further agreed that respondent no.2 shall be entitled to receive the rent pertaining to shop no. X/916, Chand Mohalla, Gandhi Nagar, Delhi w.e.f. February, 2015 and petitioner no.1 shall give his no objection, if need arises. It is agreed that the parties shall withdraw the cases filed by them against each other within 15 days after recording of their statements in first motion petition. It is agreed that the custody of the minor daughters shall remain with respondent no.2

and petitioner no.1 shall not any visitation right and he shall not claim their custody at any point of time. It is agreed that after receipt of the above said properties, respondent no.2 shall be left with no dispute/claim against petitioner no.1 or any of his family members in future. It is agreed that if any case/complaint is pending between the parties arising out of their marriage, the same shall be withdrawn by the concerned party.

Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 14.07.2016 supporting this petition. In the affidavit, she has stated that she has no objection if the FIR in question is quashed. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the respondent no. 2 has been recorded in this regard in which she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. She further stated that she has no objection if the FIR in question is quashed.

5. In *Gian Singh v. State of Punjab* (2012) 10 SCC 303 Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466. The relevant observations of the Apex Court in *Narinder Singh* (Supra) are as under:-

29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment

to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent no.2 agrees to the quashing of the FIR in question without any threat or coercion or undue influence and has stated that the matter has been settled out of her own free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon ble Apex Court in the case of State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. MANU/SC/0842/2014 and in the case of Inder Singh Goswami v. State of Uttaranchal MANU/SC/0808/2009 has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

10. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of

time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of B.S. Joshi and others v. State of Haryana and another 2003 (4) SCC 675 the Hon ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were noncompoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact the offences under Sections 498A/307 IPC are non-compoundable offences, there should be no impediment in quashing the FIR under these sections, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

11. The Courts in India are now normally taking the view that endeavour should be taken to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs such as, matrimonial disputes between the couple or/and between the wife and her in-laws. India being a vast country naturally has large number of married persons resulting into high numbers of matrimonial disputes due to differences in temperament, life-styles, opinions, thoughts etc. between such couples, due to which majority is coming to the Court to get redressal. In its 59th report, the Law Commission of India had emphasized that while dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. Further it is also the constitutional mandate for speedy disposal of such disputes and to grant quick justice to the litigants. But, our Courts are already over burdened due to pendency of large number of cases because of which it becomes difficult for speedy disposal of matrimonial disputes alone. As the matrimonial disputes are mainly between the husband and the wife and personal matters are

involved in such disputes, so, it requires conciliatory procedure to bring a settlement between them. Nowadays, mediation has played a very important role in settling the disputes, especially, matrimonial disputes and has yielded good results. The Court must exercise its inherent power under Section 482 Cr.P.C. to put an end to the matrimonial litigations at the earliest so that the parties can live peacefully.

12. In the present case, apart from offence under Section 498A IPC, it is also alleged against the petitioners that they also committed the offence under Section 307 IPC. The complainant in her statement made to the police had alleged that kerosene oil was poured on her and the accused persons tried to set her ablaze. Apparently, there is no bodily injury on the person of the complainant. In the present case, the penal Section 307 IPC has been added on the basis of circumstances and not on the basis of any grievous bodily injury. As per the ratio of judgment in the case of Narinder Singh (supra), while accepting the compromise in cases under Section 307 IPC, the High Court should go by the nature of injury sustained, portion of bodies where the injuries were inflicted and the nature of weapons used. If on the basis of circumstances, if the High Court is of the opinion that provisions of Section 307 IPC were unnecessary included, the Court can accept the settlement between the parties.

13. In view of the law laid down in the case of Narinder Singh (supra) and the fact that no bodily injury was sustained by the complainant and section 307 IPC was added in the present case only on the basis of circumstances and not on the basis of any bodily injury, this Court is of the considered opinion that it is a fit case to accept the settlement between the parties.

14. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility and is a fit case for this Court to exercise its inherent jurisdiction.

15. In the facts and circumstances of this case, in view of statement made by the respondent No.2 and the compromise arrived at between the parties, the FIR in question warrants to be put to an end and proceedings emanating thereupon need

to be quashed.

16. Accordingly, this petition is allowed and FIR No.250/2014 dated 18.04.2014, under Sections 498-A/307/34 IPC registered at Police Station Gandhi Nagar and the proceedings emanating therefrom are quashed against the petitioners.

17. This petition is accordingly disposed of.

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