

Jitender Kumar vs.the State (Nct of Delhi) & Anr

Jitender Kumar vs.the State (Nct of Delhi) & Anr

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Court : Delhi

Decided On : Jul-31-2019

Appellant : Jitender Kumar

Respondent : The State (Nct of Delhi) & Anr

Advocate for Def. : Ms. Meenakshi Chauhan, Ms. Vyoma Gaur

Advocate for Pet/Ap. : Mr. Vipin Nandwani

Judgement :

\$~3 IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

31. t July, 2019 + CRL.M.C. 789/2019 JITENDER KUMAR

... Petitioner

Through: Mr. Vipin Nandwani, Advocate with petitioner in person versus THE STATE (NCT OF DELHI) & ANR

... RESPONDENTS

Through: Ms. Meenakshi Chauhan, APP for State with SI Jitender Ms. Vyoma Gaur, Advocate for R-2 with R- 2 in person CORAM: HON'BLE MR. JUSTICE R.K.GAUBA ORDER (ORAL) 1. The second respondent was married to the first petitioner as per Hindu rites and ceremonies on 22.11.2008. The marriage ran into rough weather, the second respondent raised allegations of she having been subjected to cruelty and deprived of her stridhan, first information report (FIR)

no.1133/2015 having been registered on 27.10.2015 by police station K.N. Katju Marg on her complaint involving offences punishable under Sections 498-A/4 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner). On conclusion of the investigation, police filed report CrI. M.C. No.789/2019 Page 1 of 7 under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) on which cognizance was taken, the said matter being pending on the file of the Metropolitan Magistrate.

2. It appears parties were referred to Counselling Cell of the Family Courts in the context of proceedings arising out of case under Section 125 of the Code of Criminal Procedure, 1973 (Cr. PC) instituted by the second respondent. They entered into a settlement in the said Counselling Cell on 04.04.2018. It is on the basis of the said settlement that the present petition was filed seeking quashing of the proceedings arising out of the aforementioned case.

3. On notice, the second respondent has appeared and has submitted an affidavit sworn on 16.07.2019. Copy of her aadhar card was submitted as Annexure P-4 to the petition to confirm her identity. By the said affidavit, she confirmed the above mentioned settlement and the dispute before the Counselling Cell in the Family Court, it having led to petitions presented before the Family Court in which the marriage of the parties has been dissolved by a decree of divorce by mutual consent on 23.08.2018 in HMA no.1027/2018. The second respondent by her affidavit, as also at the hearing, confirmed that she has already received Rs.5,00,000/- (Rupees Five lakh) from the petitioner, Rs.2,50,000/- (Rupees Two lakh fifty thousand) remaining to be paid in terms of the settlement.

4. The petitioner has handed over and the second respondent has received demand draft bearing no.022010 dated 30.07.2019 for Rs.2,50,000/- in her favour, drawn on IDBI Bank, as full and final CrI. M.C. No.789/2019 Page 2 of 7 payment of money in terms of the above settlement, it satisfying her claims towards maintenance, istridhan, etc.

5. The petition, thus, has been moved before this court invoking Section 482 Cr. PC seeking quashing of the FIR113315 under Sections 406, 498A, 34 IPC of Police Station K.N. Katju Marg.

6. Pertinent to note here that offence under Section 498A IPC is not compoundable. The parties are constrained to move this court for quashing on the basis of amicable resolution arrived at by them in the facts and circumstances noted above.

7. The scope and ambit of the power conferred on this court by Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings, has been the subject matter of scrutiny and comment by the Supreme Court in a catena of judgments. It is well settled that in exercise of this inherent and wholesome power, the touchstone is as to whether the ends of justice so require. This court had the occasion to trace the relevant law on the subject in a batch of matters led by Yashpal Chaudhrani vs. State (Govt. of NCT Delhi), 2019 SCC Online Del 8179 wherein after taking note, inter alia, of State of Karnataka v. L Muniswamy, (1977) 2 SCC699 State of Karnataka v. M. Devendrappa, (2002) 3 SCC89 B.S. Joshi v. State of Haryana, (2003) 4 SCC675 Gian Singh Vs. State of Punjab and Anr. (2012) 10 SCC303 Jitendra Raghuvanshi v. Babita Raghuvanshi, (2013) 4 SCC58 K Srinivas Rao v. D.A. Deepa, (2013) 5 SCC226 Narinder Singh Crl. M.C. No.789/2019 Page 3 of 7 v. State of Punjab, (2014) 6 SCC466 State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC149 Parbhatbhai Aahir Parbatbhai Bhimsinhbhai Kurmur, (2017) 9 SCC641 and State of Madhya Pradesh v. Laxmi Narayan and others, (2019) 5 SCC688 the broad principles were culled out as under :-

"55. Though the above-noted authoritative pronouncements of the Supreme Court have consistently laid down the broad principles governing the exercise of power of the High Court under Section 482 of the Cr. PC for bringing an end to the criminal process, for addressing the concerns noted at the outset and future guidance of trial courts, some of the crucial ones may be flagged as under:- (i). The inherent jurisdiction vested in the High Court, as recognized and preserved by Section 482 Cr. PC, is primarily to prevent abuse of the process of court or to otherwise secure the ends of justice. (ii). The ends of justice are higher than the ends of mere law, the prime principle governing the exercise of inherent power being to do real, complete and substantial justice for which the court exists. in

cases (iii) It is the duty of the court to give adequate treatment to the settlement between the parties particularly involving compoundable offences, the exercise of inherent power of the High Court under Section 482 Cr.P.C., however, not being inhibited in case of non-compoundable offences though, for the latter category, such power is to be exercised sparingly and with caution. Crl. M.C. No.789/2019 Page 4 of 7 (iv). If the criminal case has overwhelmingly and predominantly civil character, particularly if it arises out of commercial (financial, mercantile, partnership or such other) transaction - and this would include the cheque bouncing cases under Section 138 N.I. Act - or matrimonial dispute or family dispute, genuine resolution on equitable terms, in entirety, by the parties should result in criminal proceedings being quashed. (v). Since the institution of marriage has an important role to play in the society, the court is to make every effort to encourage the parties to terminate such discord amicably and if it appears that elements of settlement exist, and the parties are willing, they are to be directed to the process of mediation to explore the possibility of settlement, it being desirable to do so even at the pre-litigation stage. (vi). While examining the prayer for quashing of a non compoundable offence, on the basis of settlement of the dispute between the wrongful doer and the victim, the High Court is to bear in mind as to whether the possibility of conviction is remote and oblique and further, if the continuation of the criminal case would lead to oppression and prejudice or extreme injustice for the accused. (vii). The considerations which would weigh with Court include the antecedents of the accused, possible lack of bona fides, his past conduct and that includes the question as to whether he had earlier absconded and as to how he had managed with the complainant to enter into a compromise. Crl. M.C. No.789/2019 Page 5 of 7 depravity, as mental (viii). But, the High Court, when called upon to exercise the power under Section 482 Cr. PC to bring the criminal case to an end on the basis of settlement, must steer clear of intervention in heinous or serious offences, including those involving indeed economic offences affecting the financial and economic well being of the State, such as murder, attempt forgery, rape, dacoity, financial or economic frauds, cases under Arms Act, etc., the reason being that such offences are not private in nature but have a serious impact upon society, and continuation of trial thereof is essential due to overriding element of public interest. to murder, extortion, (ix). The court, however,

is not to go by mere use of label of a serious offence (e.g. offence under Section 307 IPC), it being open to it to examine, by scrutiny of the evidence gathered, to find as to whether there are sufficient grounds to frame charge for such offence and, in this view, it being not permissible to intervene till the matter has been properly investigated. 8. In a case where criminal proceedings arise essentially out of matrimonial dispute and the parties have decided to bury the hatchet, the court must examine if there is any likelihood of the criminal prosecution resulting in conviction. In fact-situation wherein the matrimonial relation has been brought to an end by mutual consent and the parties are eager to move on with their respective lives seeking closure and if there is nothing to indicate lack of bonafide on the part CrI. M.C. No.789/2019 Page 6 of 7 of any side, denial of the prayer for quashing the criminal case would restore acrimony rather than bring about peace. Allowing continuance of the criminal action would be fruitless and clearly an abuse of judicial process.

9. The case at hand passes the muster of the above-noted tests.

10. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR11332015 under Sections 406, 498A, 34 IPC of Police Station K.N. Katju Marg and the proceedings emanating therefrom against the petitioners are hereby quashed.

11. The petition is disposed of accordingly. Dasti to both sides. R.K.GAUBA, J.

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