

Sanjay & Ors. Vs.state & Anr

Sanjay & Ors. Vs.state & Anr

SooperKanoon Citation : sooperkanoon.com/1224734

Court : Delhi

Decided On : Aug-19-2019

Appellant : Sanjay & Ors.

Respondent : State & Anr

Advocate for Def. : Ms. Meenakshi Chauhan

Advocate for Pet/Ap. : Mr. Murari Tiwari, Mr. Rahul Kumar

Judgement :

\$~6 IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 1165/2019
SANJAY & ORS. Decided on:-

"19th August, 2019

... Petitioner

s Through: Mr. Murari Tiwari & Mr. Rahul Kumar, Advs. versus STATE & ANR

... RESPONDENTS

Through: Ms. Meenakshi Chauhan, APP for the State with SI Sunil Kumar, PS Civil Lines. Mr.C.M. Sharma, Adv. 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 27.05.2013. The marriage ran into rough weather and they started living separately since 20.08.2014. The second respondent raised allegations of she having been

subjected to cruelty and deprived of her stridhan, first information report (FIR) No.33/2015 having been registered on 24.01.2015 by police station Civil lines, Delhi, on her complaint involving offences punishable under Sections 498A, 406, 34 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner), his father (second CrI. M.C. No.1165/2019 Page 1 of 7 petitioner), his brother (third petitioner) and his uncle (fourth petitioner). On conclusion of the investigation, police filed report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) on which cognizance was taken, the said matter now pending on the file of the Metropolitan Magistrate.

2. The matter was amicably settled and all the claims and disputes were resolved through settlement deed dated 26.07.2017, between the first petitioner and second respondent, before the Ld. Addl. Principal Judge (central) Tis Hazari. It was agreed as per the said settlement deed, that the husband shall pay to the wife a sum of Rs. 3,50,000/- as full and final settlement towards her claim for dowry articles, jewellery, stridhan, maintenance (past, present and future).

3. Pursuant to the said settlement, the parties had earlier approached the family court which has granted decree of divorce by mutual consent on 30.07.2018 in HMA Petition No.877/18.

4. The present petition was filed on the basis of aforementioned settlement seeking quashing of the proceedings in the criminal case.

5. The second respondent, on notice, has entered appeared and pursuant to the directions has filed an affidavit sworn on 13.08.2019, by which she has confirmed the settlement, giving no objection to the prayer of the petitioners for quashing of the FIR. Along with the affidavit she has also filed copy of her aadhar card as proof of her identity. CrI. M.C. No.1165/2019 Page 2 of 7 6. By the above-mentioned affidavit, the second respondent has confirmed that the dispute has been settled in mediation and they have obtained decree of divorce by mutual consent. She further stated that under the said settlement, an amount of Rs.1,50,000/- remains to be paid by the first petitioner at the time of quashing of FIR.

7. At the hearing, the first petitioner has handed over to the second respondent a demand draft bearing No.005812, dated 16.08.2019 of Rs. 1,50,000/- drawn on Axis bank, Mukherjee Nagar, Delhi, a copy whereof is taken on record.

8. 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.

9. 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. CrI. M.C. No.1165/2019 Page 3 of 7 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 v. State of Punjab, (2014) 6 SCC466 State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC149 Parbhatbhai Aahir Parbhatbhai 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. (iii) It is the duty of the court to give adequate treatment to the settlement between the parties particularly involving compoundable in cases CrI. M.C. No.1165/2019 Page 4 of 7 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. (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. CrI. M.C. No.1165/2019 Page 5 of 7 (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. 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. 10. In a case where criminal proceedings arise essentially out of matrimonial dispute and the parties have decided to bury the hatchet, Crl. M.C. No.1165/2019 Page 6 of 7 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 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.

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

12. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR No.33/2015 under Sections 406, 498A, 34 IPC of Police Station Civil Lines, Delhi, and the proceedings emanating therefrom against the petitioners are hereby quashed.

13. The petition and the application filed therewith are disposed of accordingly. Dasti to both sides. R.K.GAUBA, J.

August 19, 2019 nk Crl. M.C. No.1165/2019 Page 7 of 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com