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**Court :** Patna

**Decided On :** May-08-2006

**Judge :** I.P. Singh, J.

**Acts :** Dowry Prohibition Act - Sections 3 and 4; Indian Penal Code (IPC) - Sections 498A; Code of Criminal Procedure (CrPC) - Sections 320, 321, 482 and 492

**Appeal No. :** Cr. Misc. No. 24377 of 2005

**Appellant :** Subhadra Devi

**Respondent :** The State of Bihar and ors.

**Disposition :** Appeal allowed

**Judgement :**

**I.P. Singh, J.**

1. This application under Section 482 of the code of Criminal Procedure, 1973 (in short the Code) is directed against the order dated 2.5.2005 passed by the Sub Divisional Judicial Magistrate, Bettiah in Complaint Case No. 774-C of 2003, (Trial R.No. 150 of 2004) for grant of permission to the petitioner to withdraw the aforesaid complaint case filed under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

2. The petitioner has contended that she was married to opposite party No. 2 on 30.5.1997 but on account of certain mis-giving between them the marriage never became compatible leading to the institution of civil and criminal cases between them. Opposite party No. 2 filed a Matrimonial Case No. 23 of 1998 before the District Judge for annulling the marriage between him and the petitioner. The petitioner also filed Complaint Case No. 774-C of 2003 in the Court of the Chief Judicial Magistrate, Bettiah under the sections mentioned above. The aforesaid matrimonial case was dismissed by the learned Addl. District Judge, Motihari, East Champaran against which First Appeal No. 131 of 2003 was filed before this Court. So far as complaint petition of the petitioner was concerned the cognizance against opposite party No. 2 was taken under Section 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

3. Since the life of both the parties had become irreversible and incompatible their well-wishers held a Panchayati in which it was decided that the cases between the parties should be compromised and both of them will be free to lead their own lives according to their wish. It was also decided that opposite party No. 2 will pay a sum of Rs. 4,00,000/- to the petitioner for her financial claim against him. As per this Panchayati this amount of Rs. 4,00,000/- would be handed over to Shri Ramakant Pandey, Advocate which he will pay to the petitioner after acceptance of the compromise of the cases between the parties.

4. A compromise petitioner being I.A. No. 572 of 2005 was filed in First Appeal No. 131 of 2003. The opposite party paid a sum of Rs. 4,00,000/- to Punch Shri Ramakant Pandey, Advocate on the condition that he will hold this money in trust for the parties and will pay it to the petitioner after the withdrawal of criminal case as also the execution case.

5. A withdrawal petition was also filed on behalf of the petitioner in the court of the Sub Divisional Judicial Magistrate, Bettiah for withdrawing the complaint filed by the petitioner before the court. The learned court below has, however, rejected this withdrawal petition treating it to be a compromise petition by the impugned order on the ground that it has not been signed by the opposite party. On these grounds it has been contended that the impugned order be quashed.

6. The parties have been heard at length in connection with various conditions raised by them. It is clear that the offences under Section 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act are not compoundable and, therefore, no compromise petition filed in this connection can be allowed. So far as withdrawal petition is concerned the same also can not be allowed as per Section 321 of the code which specifically provides that it is only the Public Prosecutor or Addl. Public Prosecutor who can withdraw the case. In this view of the matter the petitioner is not authorized under the law to withdraw the case.

7. However, in this connection my attention has been drawn to the case of B.S. Joshi and Ors. v. State of Haryana and Anr. 2003 S.C.C. (Cri) 848.

In this case the ambit and scope of Section 492 of the Code in relation to matrimonial disputes have been decided. In this case the appellants had not prayed for compounding of the offence. In the present case also the prayer for compounding the offences was rejected by the learned court below on the ground that no compromise petition was produced before him. It was held that no doubt Section 498A of the Indian Penal Code was added with a view to punishing the husband torturing the wife or her relation to coerce them to satisfy unlawful dowry demands, but there may be a case in which the exercise of this power could be counter productive and would act against the interest of the wife and her relations. It was further held that in such a situation non-exercise of inherent power to quash the proceeding would prevent the woman from settling earlier, which was not the object of adding Section 498A of the Indian Penal Code. Accordingly, it was held that the High Court in exercise of its inherent power can quash the criminal proceeding or F.I.R. or the complaint and Section 320 of the Code will not limit or affect the powers of the High Court under Section 482 of the Code. On the strength of this decision it has been submitted that the prosecution of opposite party No. 2 as also all pending litigations between the parties may be quashed. This question had recently come up before me in another case namely Dr. Ajeya Verma and Ors. v. The State of Bihar 2006 (2) P.L.J.R. 26 in which relying on the decision of B.S. Joshi (supra) the same view has been taken. It would not be out of place to mention here that in First Appeal No. 131 of 2003, I.A. No. 572 of 2005 was filed and paragraph 8 of this petition shows that by order dated 1.3.2005 this

Court had passed a decree for dissolution of marriage and the compromise petition as contained in I.A. No. 572/05 was made a part of the decree and the appeal was disposed of in terms of the compromise petition.

8. In the result this application is allowed and the complaint petition as also the prosecution pending against opposite party No. 2 are quashed.

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