

Kamlesh and Anr Vs. State and Anr

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Court : Rajasthan Jodhpur

Decided On : Feb-06-2015

Appellant : Kamlesh and Anr

Respondent : State and Anr

Judgement :

S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

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Date of order : 06.02.2015 PRESENT HON'BLE Mr.JUSTICE VIJAY BISHNOI Mr R.S.Chouhan, for petitioneRs.Mr Vikram Rajpurohit, Public Prosecutor.

BY THE COURT:- This criminal misc.

petition under Section 482 Cr.P.C.has been preferred by the petitioners with the prayer for quashing the proceedings pending against them before the Additional Chief Judicial Magistrate, Nathdwara, District Rajsamnd (hereinafter referred to as 'the trial court') in Criminal Case No.608/2010 (State versus Kamlesh & Anr.).whereby the trial court vide order dated 02.08.2013 has attested the compromise for the offence punishable under Section 406 IPC but refused to attest the compromise for the offence punishable under Section 498-A IPC as the same is not compoundable.

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PETITION NO.1142/2014 Kamlesh & Anr.

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2 Brief facts of the case are that a complaint, lodged at the instance of respondent No.2 before the trial court, was forwarded to the Police Station, Nathdwara, District Rajsamand under Section 156(3) and the police registered the FIR No.202/2010 against the petitioners.After investigation, the police filed charge sheet against the petitioners for the offences punishable under Sections 498-A and 406 IPC in the trial court wherein, the trial is pending against the petitioners for the aforesaid offences.

During the pendency of the trial, an application was preferred on behalf of the petitioners as well as the respondent No.2 while stating that both the parties have entered into compromise and, therefore, the proceedings pending against the petitioners may be terminated.

The trial court vide order dated 02.08.2013 allowed the parties to compound the offence punishable under Section 406 IPC, however, rejected the application so far it relates to compounding the offence punishable under Section 498-A IPC.

The present criminal misc.

petition has S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

3 been preferred by the petitioners for quashing the said proceedings against them.

Learned counsel for the petitioners has argued that as the complainant-respondent No.2 and the petitioners have already entered into compromise and on the basis of it, the petitioners have already been acquitted for the offence punishable under Section 406 IPC, there is no possibility of conviction of the petitioners for the offence punishable under Section 498-A IPC.

It is also contended by learned counsel for the petitioners that the respondent No.2 has remarried with someone else.

It is also argued that no useful purpose would be served by continuing the trial against the petitioners for the offence punishable under Section 498-A IPC because the same may derail the compromise arrived at between the parties.

Despite service of notice, the respondent No.2 is not appearing.

It seems that the respondent No.2 has no objection if the proceedings pending against the petitioners under Section 498-A Cr.P.C. is quashed.

As per learned counsel for the petitioners the S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

4 respondent No.2 has remarried with someone else, therefore, no matrimonial dispute exists between the petitioners and the respondent No.2.

It is also not in dispute that the petitioners and the respondent No.2 have already entered into compromise and on the basis of it an application was preferred on behalf of the petitioners as well as the respondent No.2 before the trial court while stating that both the parties have entered into compromise.

The Hon'ble Apex Court while answering a reference in the case of Gian Singh versus State of Punjab & Anr.

reported in JT20129) SC - 426 has held as below:- 57.

The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code.

Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

5 justice or (ii) to prevent abuse of the process of any Court.

In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed.

However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime.

Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc.cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute.

Such offences are not private in nature and have serious impact on society.

Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc.cannot provide for

any basis for quashing criminal proceedings involving such offences.

But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

6 purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc.or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute.

In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.

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 proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

7 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

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Having considered the facts and circumstances of the case and looking to the fact that the petitioners and respondent No.2 have resolved their dispute by mutual compromise and the respondent No.2 has remarried with someone else, there is no possibility of accused-petitioners being convicted in the case pending against them.

When once the matrimonial disputes have been settled by the mutual compromise, then no useful purpose would be served by keeping the criminal proceedings pending.

Keeping in view the observations made by the Hon'ble Supreme Court in Gian Singh's case (supra).this Court is of the opinion that it is a fit case, wherein the criminal proceedings pending against the petitioners can be quashed while exercising powers under Section 482 S.B.CRIMINAL MISC.

PETITION NO.1142/2014 Kamlesh & Anr.

V/S State of Rajasthan & Anr.

8 Cr.P.C.Accordingly, this criminal misc.

petition is allowed and the criminal proceedings pending against the petitioners before the Additional Chief Judicial Magistrate, Nathdwara, District Rajsamnd in Criminal Case No.608/2010 (State versus Kamlesh & Anr.) are hereby quashed.

Stay petition stands disposed of.

[VIJAY BISHNOI], J.

Abhishek 68

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