

**Sujoy Banerjee and Another Vs. State and Another**

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**Court :** Delhi

**Decided On :** Sep-22-1999

**Reported in :** 1999VIAD(Delhi)141; 82(1999)DLT71; I(2000)DMC288; 1999(51)DRJ342

**Judge :** M.S.A. Siddiqui, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 320(9) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 325 and 498-a

**Appeal No. :** Crl. M. (M) No. 428/95 & Crl. M. No. 644/95

**Appellant :** Sujoy Banerjee and Another

**Respondent :** State and Another

**Advocate for Def. :** Ms. Seema Gulati, Adv.

**Advocate for Pet/Ap. :** Mr. Girish Kathpalia, Adv

**Judgement :**

ORDER

**M.S.A. Siddiqui, J.**

1. By this petition under Section 482 Cr. P.C. petitioners seek quashing of the criminal proceedings emanating from FIR No. 652/93 registered under Sections

498-A/325/34 IPC at the Police Station, Trilok Puri and pending on the file of the Metropolitan Magistrate, Delhi.

2. Briefly stated, the facts giving rise to this petition are that on 14.12.1991, respondent No. 2, Smt. Sumita entered into wedlock with the petitioner No. 1 on 9.9.1992, Sumita's parents, namely, Mr. Premen Maitara and Mrs. Dipali Maitara Lodged a report at the Crime against Women Cell, Nanak Pura, New Delhi alleging cruelty at the hands of her husband (petitioner No. 1). On the basis of the said report, FIR No. 652/93 was registered at the Police Station Trilok Puri, Delhi under Sections 498-A/325/34 IPC. Investigation pursuant to the said report culminated into the submission of a charge-sheet under Section 498-A/406/325/34 IPC against the petitioners. Quashment of the criminal proceedings emanating from the said FIR is sought on the ground that the material collected by the prosecuting agency does not constitute any offence against the petitioners and further on 29.10.1992, the petitioner No. 1 and the respondent No. 2, submitted a joint application (Annexure-B at page 28 of the paper book) before the Crime Against Women Cell for dropping the criminal proceedings and in view of the said settlement between the parties, present proceedings cannot be allowed to continue and it would be an abuse of the process of the Court.

3. The respondent No. 2, Smt. Sumita, resisted the petitions filed under Section 482 Cr. P.C. contending that her signatures on the joint application (Annexure-B) were obtained by practicing fraud on her. According to respondent No. 2, the evidence collected by the investigating agency discloses a prima facie case under Sections 498-A/406/325/34 IPC against the petitioners.

4. It is undisputed that the petitioners No. 2 is the real brother of the petitioner No. 1 and resides at Calcutta. It is significant to mention that the FIR is conspicuous by absence of any allegation of cruelty or harassment against the petitioner No. 2. The respondent No. 2 has filed a detailed reply to the petition filed under Section 482 Cr. P.C. and she has nowhere stated in the reply that the petitioner No. 2 ever demanded dowry or maltreated or harassed her in respect of the alleged demand of dowry. The only allegation made against him in para No. 1 of the reply is that on 21.10.1992, when she along with her mother visited to a friend of her

husband (petitioner No. 1), she met with petitioner No. 2 who abused and threatened her with dire consequences. Admittedly, respondent No. 2 did not lodge any report at the concerned Police Station against the petitioner No. 2 regarding his alleged acts. In this view of the matter, it can safely be concluded that the facts emerging from the material collected by the prosecuting agency do not disclose any offence against the petitioner No. 2. In these circumstances, allowing the proceedings to continue and thereby forcing the petitioner No. 2 to face ordeal of a criminal trial would be an abuse of the process of the law. It is well settled that judicial process cannot be allowed to be used as an instrument of oppression or needless harassment. (Punjab National Bank and Others Vs . Surendra Prasad Sinha : 1992 CriLJ2916 ). Consequently, criminal proceedings arising out of the FIR No. 652/93 registered at the Police Station, Trilok Puri, Delhi are liable to be quashed qua the petitioner No. 2.

5. As regards the case against petitioner No. 1, the averments made in the FIR and the material collected by the prosecuting agency make out a prima facie case under Sections 498-A/406/325/34 IPC. Learned counsel appearing for petitioner No. 1 contended that on 29.10.1992, respondent No. 2 has settled the matter with the petitioner No.1 and thereafter both of them filed a joint compromise application before the Crime Against Women Cell and in view of the settlement between the parties, present proceedings cannot be allowed to continue as it would amount to an abuse of the process of the Court. It needs to be highlighted that the respondent No. 2 has seriously disputed the alleged settlement by contending that her signatures on the said compromise application were obtained by practicing fraud on her. In view of the stand taken by the respondent No. 2 it cannot be said that there is no prospects of the case ending in conviction and continuance of the present criminal proceedings would amount to an abuse of the process of the Court. That apart, offences punishable under Sections 498-A/406 IPC are non-compoundable offences and in the case of Kamal Dhawan v. The State and Another (Crl. M. (M) No. 681/96 decided on 6.9.1999), I have held that inherent power under Section 482 Cr. P.C. cannot be invoked to terminate criminal proceedings in respect of a non-compoundable offence on the ground of settlement between the parties as it would run under the teeth of the statutory prohibition contained in sub-Section (9) of Section 320 of the Code of Criminal Procedure.

Consequently, the present criminal proceedings cannot be terminated against the petitioner No. 1 on the ground of the alleged compromise dated 29.10.1992.

6. For the foregoing reasons, the petition filed under Section 482 Cr. P.C. is partly allowed and the proceedings arising out of the FIR No. 652/93 registered at the Police Station Trilok Puri, Delhi and pending on the file of the Metropolitan Magistrate, Delhi are quashed qua the petitioner No. 2, Sanjay Banerjee.

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