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Kamal Dhawan Vs. the State and Another

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Court : Delhi

Decided On : Sep-22-1999

Reported in : 1999(51)DRJ329; ILR1999Delhi490

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

Acts : Code of Criminal Procedure (CrPC), 1973 - Sections 320 and 482; Indian Penal Code (IPC), 1860 - Sections 406 and 498-A

Appeal No. : Crl.M.(M). No.681/96 & Crl.M. No.1216/96 and Crl. M.(M). No. 677/96 & Crl.M. No. 1203/96

Appellant : Kamal Dhawan

Respondent : The State and Another

Advocate for Def. : Mr. H.J.S. Ahluwalia and ; Mr. Rajeev Awasthy, Advs.

Advocate for Pet/Ap. : Mr. Satish Tamta, Adv

Judgement :
ORDER

M.S.A. Siddiqui, J.

1. The petitioners have filed two separate petitions under Section 482 Cr.P.C. for quashing the criminal proceedings arising out of the FIR No.267/92 registered

under Sections 498-A/406 IPC, at Police Station Vinay Nagar, New Delhi and pending on the file of Ms. Sunita Gupta, Metropolitan Magistrate, New Delhi as well as the criminal proceedings arising out of the FIR No.248/92 registered under Sections 341/506 IPC at Police Station defense Colony, New Delhi and pending on the file of Ms. Neena Bansal Krishna, Metropolitan Magistrate, New Delhi. I propose to dispose of both the petitions by this common order.

2. The preamble of the prosecution reveals that on 18.1.1991 the respondent No.2, Smt. Sangeeta Dhawan was married to the petitioner, Kamal Dhawan. The petitioners were not satisfied with the dowry given at the time of marriage, which projected a shadow on marital life of the petitioner No.1 and respondent No.2. The married life respondent No.2 became gloomy and she was subjected to physical and mental cruelty in connection with the demand of dowry. The members of the family of respondent No.2's husband, namely Vijay Dhawan, Smt. Bimla Dhawan and Panalal Dhawan took an active role in perpetrating torture on the respondent No.2. Consequently, respondent No.2 lodged two separate FIR's against the petitioners. FIR No.267/92 was lodged under Section 406/498-A IPC at the Police Station Vinay Nagar, New Delhi and the FIR No. 248/92 under Sections 341/506 IPC was lodged at the Police Station defense Colony, New Delhi. Investigation pursuant to the said reports culminated into submission of two separate charge-sheets against the petitioners. Thereafter, the petitioner Kamal Dhawan and the respondent No.2 entered into an agreement, whereby they settled their disputes. As per agreement, a total sum of Rs.2,50,000/- was to be paid to the respondent No.2. In terms of the compromise, the petitioner, Kamal Dhawan and the respondent No.2 obtained a decree of divorce under Section 13-B(1) of the Hindu Marriage Act and the petitioner Kamal Dhawan paid a sum of Rs.1,25,000/- to the respondent No. 2, the balance amount of Rs. 1,25,000/- was agreed to be paid to the respondent No.2 at the time of quashment of the criminal proceedings arising out of the first information reports mentioned above. It is alleged that the parties have already settled all their disputes amicably and the petitioner Kamal Dhawan has already paid a sum of Rs.1,25,000/- to the respondent No.2 in terms of the compromise and further the respondent No.2 had agreed to get the criminal proceedings quashed on payment of Rs.1,25,000/- the criminal proceedings arising out of the FIR Nos. 267/92 and 248/92 and pending on the files of the

concerned Court are liable to be quashed under Section 482 Cr.P.C.

3. Both these petitions have been opposed by the respondents. The respondent No.2 resisted the petitioners contending that she was coerced to enter into a compromise as alleged by the petitioner Kamal Dhawan. It is alleged that the criminal proceedings cannot be quashed on the basis of an agreement, which is void ab initio and further, the quashment of the said proceedings would amount to granting permission to compound the non-compoundable offences, which is impermissible in law.

4. Learned counsel for the petitioners submitted that in view of the settlement arrived at between the petitioner Kamal Dhawan and the respondent No.2, the petitioners are entitled to have the criminal proceedings quashed under Section 482 Cr.P.C. inasmuch as allowing the proceedings to continue would be an abuse of the process of the Court. Reliance is placed on decision of this Court in Satish Ghathwal v. State of Anr., 75 (1998) DLT 370 in support of the said contention. In that case after initiation of criminal proceedings under Section 498A/406/34 IPC, parties entered into a written agreement whereby they settled their disputes on the terms and conditions incorporated therein. Pursuant to the said agreement, the husband and the wife filed a joint petition under Section 13-B of the Hindu Marriage Act for divorce. On 25.9.1996, a sum of Rs.5 lacs was paid to the wife and the balance amount was to be paid to the wife at the time of recording her statement before matrimonial court. However, both the parties made consenting statements and a sum of Rs.1,00,000/- was again paid by the husband to the wife in terms of the compromise. After receipt of the said amount, the wife did not agree for the Second Motion as a result whereof the divorce could not be secured. Thereupon the husband filed a petition under Section 482 Cr.P.C. for quashing the Criminal proceedings arising out of the FIR lodged by the wife. My learned brother Goel, J quashed criminal proceedings on the grounds mentioned in the following passage of the judgment:

'Her statement was a representation made and undertaking given before this Court that she will not pursue her complaint and on the basis of this, the petitioner has given and she has accepted Rs.6.00 lakhs in part satisfaction of the agreement.

This is very unfortunate that she is now backing out from this undertaking. She is estopped in law from withdrawing her undertaking and representation. This would amount to committing Contempt of Court by her. From the agreement entered into between the parties and which is confirmed by them in Court, no doubt is left that this was a package deal for divorce as well as for quashing the criminal proceedings. By denying this agreement, she is certainly misusing the process of the Court. The Court would not allow a party to misuse its process.'

5. The question is: whether the petitioner is entitled in invoke the, the provision of Section 482 Cr.P.C. for quashment of the criminal proceedings in question on the basis of the alleged compromise between the parties. Admittedly, the offences under Sections 498-A/506 IPC, which are subject matter of the proceedings in the Courts below are non-compoundable. It needs to be highlighted if the criminal proceedings in respect of these offences are quashed under Section 482 Cr.P.C. on the basis of the alleged compromise, it would amount to termination of the criminal proceedings on account of compounding of the said offences. The whole scheme of compounding of the offences is dealt with and regulated by Section 320 of the Code of Criminal Procedure. The provisions of Section 320 of the Code are exhaustive in nature and Sub Section (9) to section 320 is couched in a mandatory form and it lays down that no offence shall be compounded except as provided by this section. The further question is: Can a High Court in exercise of jurisdiction under Section 482 Cr.P.C. convert a non compoundable offence into a compoundable offence and vice versa? The answer should be No. At this stage, it would be appropriate to refer to Section 482 of the Code which runs as follows:-

'482. Saving of inherent powers of High Court-Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may necessary to give effect to any order under this code, or to prevent abuse of the process of any Court or otherwise to secure the ends of the justice.'

6. In R.P. Kapur Vs . State of Punjab : 1960 CriLJ1239 , it was hold that the inherent power cannot be exercised in regard to matters specially covered by the other provisions of the Court. In Madhu Limey Vs . State of Maharashtra : 1978 CriLJ165 , the Apex Court laid down the following principles in relation to the

exercise of the inherent power of the High Court under Section 482 of the Code:

(I) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(II) that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(III) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In Suraj Devi Vs . Pyre Lal : 1981 CriLJ296 , the Apex Court held:-

'Now it is well settled that the inherent power of the Code cannot be exercised for doing that which is specifically prohibited by the Code.'

In Simir Vs . Dolly Mukherjee : (1990)2SCC437a :-

'the inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.

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'if a matter is covered by an express letter of law, the Court cannot give a go-bye to the statutory provisions of and instead evolve a new provision in the garb of inherent jurisdiction.'

In Dharmpal Vs . Ramshree : 1993 CriLJ1049 :

'It is now well settled that inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code.'

7. In Palm Pahth v. State of Mysore 1966 Supp. SCR 477. it was held that powers of the High Court under Section 482 could be exercised only for either of the three purposes specifically mentioned in the Section; it cannot be invoked in respect of any matter covered by the specific provisions of this Court; and it cannot be invoked if its exercise would be inconsistent with any of the specific provisions of

the Code. The same view has been reiterated by the Apex Court in the cases of Marry Angles & Ors., Vs . State of Tamil Nadu : 1999 CriLJ3513 and Arun Shanker Shukla Vs . State of U.P. : 1999 CriLJ3964 . In the case of Marry Angles (supra) it was held that while exercising inherent jurisdiction under Section 482, Court has power to pass such orders (not inconsistent with any provision of the Code), (1) to give effect to any order passed under the Code or (ii) to prevent abuse of the process of any Court or (iii) otherwise to secure the ends of justice. In the case of Arun Shanker Shukla (supra) it was held that;

'.....But the expression 'abuse of the process of law' or 'to secure the ends of justice' do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well neigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code....'.

8. A conspectus of the above decisions makes it clear that Section 482 of the code preserves the inherent power of the Court as may be necessary for the ends of justice or to prevent abuse of the process of the Court or to give effect to any order passed under the Code. Inherent powers under Section 482 of the code cannot be invoked to circumvent or to nullify the express provisions of the Code or to subvert legal interdicts written in the same Code. In other words the inherent power should not invade areas set apart for specific power under the Code. Section 482 Cr.P.C. does not, however, authorise the High Court to invest itself with jurisdiction where it is not conferred by law. 'By jurisdiction is meant the extent of the power which is conferred upon the Court by its constitution to try a proceeding; its exercise cannot be enlarged because an extraordinary situation requires the Court to exercise it. It is also well settled that the Court cannot rewrite, recast or reframe the legislation. (State of Kerala Vs . Mathai Merles) : 1987 CriLJ308 and Union of India v. Devki Nand Aggarwal AIR 1991 SCW 2754. It is the duty of the Court to render justice in

accordance with law and not in accordance with its own notion. In this connection I may usefully excerpt the following statements of Benjamin Cordozo:

'The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiments, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to `the primordial necessity of order in social life.' Wide enough in all conscience is the field of discretion that remains.'

(quoted from 'The Nature of judicial process by Benjamin Cordozo).

9. The inherent power of a Court has its roots in necessity and its breath is co-extensive with the necessity. Certainly a Court while exercising inherent power cannot go against any statutory prescription. Any order passed by a High Court under Section 482 of the Code against statutory prescription can neither be termed as an order passed to prevent the abuse the process of the Court or to secure the ends of justice. It follows that in a criminal proceedings, a party thereto cannot be compelled to act in any manner contravening the provisions of the Code.

10. In Thakur Ram & Ors., Vs . The State of Bihar, : 1966 CriLJ700 , it was observed that barring a few exceptions, in criminal matters, the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book. Social stability and order require to be regulated against the offender as it is an offence against the society as a whole. In a criminal trial, a complainant cannot enter into an agreement with the accused to compound a non-compoundable offence as it amounts to circumvention of the provision of sub section (9) of Section 320 of the Code. In Ram Lal & Anr., v. State of J.K. (1991) 1 LRI 1215, it was held by the Apex Court that an offence which the law declares to be non-compoundable, even with the permission of the Court, cannot be

compounded at all. This judgment has been cited with approval in the decision rendered by the Supreme Court in S.N. Mohanty and Anr. Vs . State of Orissa : 1999 CriLJ3496 , As noticed earlier, the offences under Section 498-A and under Section 406 IPC (if the value of the property exceeds two hundred and fifty rupees) are non-compoundable offences. Thus, in the instant case, the agreement relating to compounding the offences punishable under Sections 498-A/406 IPC was void under Section 56 of the Contract Act, which states that an agreement to do act impossible in itself is void. In Boothalinga Agencies Vs . Poriaswami : [1969]1SCR65 , it was held that:

'The doctrine of frustration of contract is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. It should be noticed that Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.'

11. Reference may, in this connection, be made to the decision rendered by the Constitutional Bench of the Supreme Court in Union Carbide Corporation Vs . Union of India : AIR 1992 SC248 , which lays down that this Court, in exercise of its inherent jurisdiction cannot direct compounding of offences which are otherwise non-compoundable under the Code. Thus, what is interdicted by the legislature in direct terms cannot be obviated in any indirect manner.

12. It appears that when the decision in the case of Satish Ghathwal (supra) was rendered attention of my learned brother Goel, J. was not drawn to the aforesaid legal principles of law enunciated by their Lordships of the Supreme Court and the legal prohibition contained in sub Section (9) to Section 320 of the Code. As noticed earlier, compounding of offences which are otherwise not compoundable under Section 320 of the Code are expressly barred by sub Section (9) of Section 320 of the Code. It is a cardinal principle of the interpretation of statute that the provisions contained in a statutory enactment has to be construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received a special treatment, such special provision will

exclude the applicability of any general provision which might otherwise cover the said topic. (Maharashtra State Board of Secondary and Higher Secondary Education Vs . Paritosh Bhupesh Kumar Sethi. : [1985]1SCR29). In Union of India Vs . Raghubir Singh : [1989]178ITR548(SC) , it was held that application of any general principle must yield to the limiting terms of the statutory principle itself.

13. In the instant case, any order passed by this Court terminating the criminal proceedings on the ground of an agreement between the parties would run in the teeth of the statutory prohibition contained in Section 320(9) of the Code of Criminal Procedure. While dealing with this issue, the Supreme Court held in the case of Union Carbide (supra) that 'the order terminating the pending criminal proceedings is not supportable on the strict terms of Section 320 or 321 or 482 Cr.P.C'.

14. On an analysis of the aforesaid authorative pronouncements of the Supreme Court is absolutely clear that power under Section 482 Cr.P.C. cannot be exercised to terminate the pending criminal proceedings arising out of an offence which is otherwise non-compoundable on the ground of compromise or settlement between the parties. Hence, the decision of Satish Ghathwal (supra) was rendered per incuriam'.

15. In Mamleshwar Vs . Kanayaiya Lal : [1975]3SCR834 , the doctrine of per incuriam has been explained by their lordships of the Supreme Court as under:-

'We do not intend to detract from the rule that, in exceptional instances, whereby obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obstructive omission.'

16. Constitutional Bench of the Supreme Court declared the law as to what constitutes 'per incuriam' in A.R. Antulay Vs . R.S. Nayak : 1988 CriLJ1661 :

'`Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court

concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.'

17. For the aforesaid reasons, the decision in the case of Satish Ghathwal (supra) which is rendered in per incuriam is not a binding precedent. There is no need to refer the matter to Division Bench or Full Bench.

18. In the instant case, there is a serious contest between the parties with regard to the alleged compromise. In view of the said dispute it cannot be said that there is no prospect of ending the cases in conviction and the trial of these cases would be an exercise in futility or allowing the criminal proceedings to continue would be an abuse of the process of the Court.

19. In the result both petitions filed under Section 482 Cr.P.C. are dismissed.

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