

Saleemuddln and ors. Vs. State and ors.

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Court : Delhi

Decided On : Mar-04-1999

Reported in : 2000IVAD(Delhi)548; 85(2000)DLT350; I(2000)DMC693;
2000(56)DRJ180

Judge : S.N. Kapoor, J.

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

Appeal No. : Crl. M (M) No. 4536/98

Appellant : Saleemuddln and ors.

Respondent : State and ors.

Advocate for Def. : Mr. Akshay Bipin, Adv.

Advocate for Pet/Ap. : Mr. Gagan Chhabra, Adv

Judgement :

ORDER

S.N. Kapoor, J.

1. Learned counsel for the parties pray that the statement of husband wife may be recorded. Let their statements be recorded.

Heard the counsel for the parties.

Briefly stated, the material facts are as under :

Petitioner No. 1, Saleemuddin was married to complainant/respondent No. 2, Najma Naaz, on 23rd March, 1987 according to Muslim law. Two children were born out of the wedlock. However, some differences and misunderstanding arose in the family. Najam Naaz, wife, lodged an FIR No. 171/91 under Section 498-A/406 I.P.C. with the police station Chandi Mahal, Delhi. Other petitioners are brothers and sisters of petitioner No.1, Saleemuddin. There has been inter se fights among the two families. Recently on intervention of elderly and respectable people of the area the families of petitioner No.1 and respondent No. 2 sat down and decided to end the bitterness and to live in peace in futher. Petitioner No.1 and respondent No. 2 accordingly agreed to live together for their own betterment and for the betterment of their children. The family would respect her and everybody shall make conscious effort to live together in peace. The petitioner shall give all legitimate rights to the wife and children and respondent No. 2 on her part shall also give love and respect to all. It is notable that respondent No. 2 is living with her husband Saleemuddin for quite some time. She also appears to be happy. She prays that her marriage may be saved. This Court has been assured by petitioner Saleemuddin that he would try his level best to keep his wife happy and would not give her any occasion to approach either the police or the Court. He also prays that his family life may be saved, for he has got two growing children, namely, Master Anwar and Baby Gulnaz. Children of the parties are also present. Hence, in order to save the married life of the couple and to avoid unnecessary bitterness and to promote the ends of justice this petition has been filed under Section 482 of the Cr. P.C. 1973 for quashing the said FIR as well as the proceedings relating thereto.

2. It is submitted by learned counsel for the petitioners that reading of Section 482 makes it amply clear that Section 482 is not subservient to any other provisions contained in the Code in view of the non obstinate clause in the beginning of Section 482. Consequently, provisions under sub-section (9) of Section 320 do not curtail the powers of the Court to quash the proceedings if the Court is otherwise

satisfied that it is necessary to do so to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is contended that suppose for the sake of technicalities arising out of sub-Section (9) of Section 320, the FIR and the proceedings are not quashed, then it would amount to unsettle otherwise setting family. All over the world such settlements are encouraged and this Court should not feel inhibited in quashing the proceedings to secure and save the family life of the parties. That is the requirement of ends of justice. Further it was also decided that they have settled all the disputes relating to cruelty and "Stri Dhan" and everything stands condoned. The petitioners have undergone trial for the last seven years. Now, the compromise has been arrived at between the parties. Hence, prayer for quashing of the FIR under Section 482 of the Cr.P.C.

3. It is not in dispute that offence under Sec. 498-A is not compoundable and offence under Sec. 406 IPC could also not be compounded, for the value of the property exceeds Rs. 250/-. In a recent judgment in Ram Lal & Anr. Vs . State of Jammu and Kashmir, : 1999 CriLJ1342 , the Supreme Court took the view that Sub-Section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban by stating 'No offence shall be compounded except as provided by this section' and therefore, the Supreme Court refused to accede to the request of the learned counsel to permit the offence under Section 326 IPC to be compounded. In Amar Nath Vs . State of Haryana, : 1977 CriLJ1891 , the Supreme Court observed that the power under Section 482 should not be resorted to if there is specific provision in the Code for the redressal of the grievance of the aggrieved parties. Accordingly, feeling it desirable the parties were heard at length.

4. Before proceeding further, it would be desirable to refer to Section 482 Cr.P.c., which reads as under :

'Saving of inherent powers of High Court.

482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be 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 justice.

The learned counsel for the petitioner relies upon V.C. Shukla Vs . State, : 1980 CriLJ690 in support of his contention. In that case after considering numerous earlier judgments, the Supreme Court in para 6 of that judgment while dealing with a bar similar to bar under Section 320(9) of the Cr. P.C. in Section 397(3) of the Cr.P.C. observed about the scope of Section 482 as under :

'...Sub-section (3), however, does not limit at all the inherent power of the High Court contained in Sec. 482, as mentioned above. It merely curbs the revisional power given to the High Court or the Sessions Judge under Sec. 397(1) of the Code'.

5. In that case Amar Nath Vs . State of Haryana, : 1977 CriLJ1891 was also considered wherein a observation was made that the power under Section 482 should not be resorted to if there is specific provision in the Code for the redressal of the grievance of the aggrieved parties. S. Murtaza Ali, J., who was party to the Amar Nath v. State of Haryana (supra), was also party to the judgment in V.C. Shukla v. State (supra) and it was observed after referring to Amar Nath's case (supra) as under :

'It is no doubt true that this Court held that an order summoning an accused was an interlocutory order but being a matter of moment it decided the important aspect of the trial and was, therefore, in a sense a final order which could be revised by the Sessions Judge or the High Court Section 397 of the Code. The observations made by this Court, however, have to be read in the light of the peculiar facts of the said case".'

6. While considering the impact of non obstinate clause in Section 11 of the Special Court Act, the Supreme Court observed as under:

'17... The non ob stands clause which starts with the words` Notwithstanding anything in the Code' excludes appeals from any interlocutory order of a Special Court. The reason for this exclusion is not far to seek. In the first place, such an exclusion is fully consistent with the object of the Act, viz., to secure the quickest

dispatch and an expeditious disposal of the case so as to cut down all delays which may be caused interlocutory orders also. As the non obstands clause expressly excludes the provisions of the Code of Criminal Procedure, we cannot call into aid the provisions of Sec. 397(2) of the Code which would amount to frustrating the very object which Sec. 11 seek to advance.

7. The Supreme Court in *Krishanan & Anr. v. Krishanveni & Anr.* JT 1997 (1) 657 further observed as under:

'14. In view of the above disussion, we hold that though the revision before the High Court under Subsection (1) of Section 397 is prohibited by Subsection (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to misscarrige of justice and in setting aside the order of the courts below..."

8. The applicant further contends that seeing the language of Section 482, the anxiety of the framers of the Code to prevent abuse of the process of the court or otherwise to secure the ends of justice, the High Court can pass any order notwithstanding anything contained in the Cr. p.c.

9. What is the meaning of the phrase ' otherwise to secure ends of justice?' no doubt this phrase may be interpreted according to ones own perception. In : 1992 CriLJ560 , the Supreme Court observed that the fresh trial after 33 years of occurrence was not justified in the interest of justice.

10. The aim and object of every law is to secure just order for the purpose of ensuring greater happiness in the society. When any unmarried girl finds a wife who has been thrown out by her husband, she is scared, suffer from fear psychosis as to what would happen to her after her marriage. The continuation of this kind of cases will continue to create bitterness. Seeing a mother-in-law, father-in-law, bother-in-law or sister-in-law running to the courts to save themselves from the allegations made by the estranged wife will stir fear psychosis among the would be mother in law, father-in-law bother in law and sister in law. In such

circumstances, this Court is supposed to ensure larger happiness by allowing the settlements between the parties, specially where the parties have started living together or the divorce has taken place to enable them to settle down in life and allout effort has to be made by each one of us to contain this ever spreading fear psychosis leading to tension and consequential strange relations.

11. Supposing for the sake of argument it is accepted that this Court feels inhibited to exercise extraordinary powers under Section 482 to quash the proceedings, the only result would that the witnesses who are appearing in this case would be forced to tell lies before the Court, making the system a laughing stock and the net result would be the same. There would be sheer wastage of time and energy of the Court. The vested interests here and there may try to exploit the situation. Would it serve the ends of justice? If not, then this Court is bound to exercise powers under Section 482 Cr.P.C.

12. I must appreciate fairness of learned counsel for the State who submits that in the larger interest of the society she would not oppose exer cise of the power under Section 482.

13. In the peculiar facts and circumstances and seeing that the husband and wife are living together for the last two years and for the foregoing reasons, I feel that it would be appropriate to quash the proceedings relating to FIR No. 171/91 under Section 498-A/406 I.P.C PS Chandi Mahal, Delhi.

The petition is disposed of accordingly.