

Kishore Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-06-1997

Reported in : II(1998)DMC487; 1997(2)WLC609; 1997(1)WLN172

Judge : Rajendra Saxena, J.

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

Appeal No. : Crl. Misc. Petition No. 525 of 1996

Appellant : Kishore Kumar

Respondent : State of Rajasthan

Advocate for Def. : C.R. Jakhar, Public Prosecutor,; Rajni @ Gana, Adv. (for No. 2) and;Party-in-person

Advocate for Pet/Ap. : Om Mehta, Adv.

Disposition : Petition allowed

Judgement :

Rajendra Saxena, J.

1. This petition filed under Section 482, Cr.P.C. has been directed against the order dated 11.12.1995 passed by the learned Addl. Civil Judge and Judicial

Magistrate No. 4, Jodhpur, whereby he did not accept the final report submitted by the Investigating Officer and took cognizance of the offence under Section 498A, IPC against the accused petitioners and issued bailable warrants against them.

2. It appears that non-petitioner Smt. Rajni @ Ganga filed a criminal complaint dated 18.11.1994 with the averments that she was married to petitioner Kishore Kumar on 22.7.1992 as per Hindu rites; that after two months of their marriage petitioner Kishore Kumar went away to Dubai and thereafter her mother-in-law Smt. Dropdi, aunt-in-law Smt. Lata (Mausi) and maternal uncle-in-law Khemdas subjected her to cruelty and made a demand from her for Rs. 20,000/- diamonds and other articles. That on 1.4.1993 her husband came from Dubai and she went to Dubai with him where she stayed till December, 1993 and there also her husband Kishore Kumar also harassed and subjected her to cruelty.

3. The said complaint was sent under Section 156(3), Cr. P.C. by the learned Magistrate to SHO, P.S. Sardarpura, who registered the case and after investigation submitted a final report on the ground that non-petitioner Smt. Rajni has submitted a letter (Ex. P3) to the effect that since her husband had sent notice for divorce to her, she got enraged and filed the said criminal complaint and that she did not want to pursue the same. The Investigating Officer also mentioned in the final report that a Sindhi Panchayat took place on 28.10.1994, wherein both the parties have compromised the matter. The learned Magistrate, however, did not accept the final report and on the basis of statements of witnesses recorded under Section 161, Cr.P.C. took cognizance for the offence under Section 498A, IPC against the petitioner. Hence this petition.

4. Smt. Rajni @ Ganga has appeared in this Court in person. She has specifically stated that she does not want to press her criminal complaint, that she has already compromised the matter in the Panchayat of her community and that in pursuance thereof petitioner Kishore Kumar has already deposited an amount of Rs. 2,00,000/- in fixed deposit in her favour and returned all articles of her stridhan and that she and Kishore Kumar have also filed an application for divorce under Section 13(B) of the Hindu Marriage Act in the Family Court, Jodhpur.

5. The learned Public Prosecutor not opposed this petition.

6. I have considered the submissions made before me. A perusal of the impugned order indicates that the learned Magistrate has not given any valid reason for not accepting the final report submitted by the Investigating Officer and not placing any reliance on the letter (Ex. P3) submitted by non-petitioner Smt. Rajni. On the other hand, he has simply relied on the initial police statements given by Smt. Rajni and her witnesses. Smt. Rajni has in most clear, cogent and unambiguous terms stated in this Court that she has already compromised the matter with the petitioners that petitioner Kishore Kumar has also deposited an amount of Rs. 2,00,000/- as fixed deposit in her favour and has also returned all articles of her stridhan and now she does not want to press and pursue the criminal complaint filed by her. I am satisfied that the submissions made by Smt. Rajni are voluntary, without duress and that the compromise is for her benefit and welfare.

7. It is true that offence under Section 498A, Cr.P.C. is not compoundable. In *Santokh Singh v. State of Rajasthan*, 1995 Raj Cri C 618 on the criminal complaint filed by wife cognizance for the offences under Sections 498A and 406, IPC was taken by the Judicial Magistrate against her husband and father-in-law and mother-in-law. Subsequently a compromise took place between them, and she started living with her husband. It was held that though the said offences may not be compoundable but this Court by invoking its inherent power under Section 482, Cr.P.C. can quash the proceedings, if the ends of justice so demand and accordingly quashed the said criminal proceedings.

8. In *Om Prakash Modi v. State of Rajasthan*, (1994) 1 Raj LR 389, it was held that matrimonial offences are basically family problems, than being offences, against the society and that adjustment and tolerance are safer ways for a happy married life. Incidents do take place between a wife and husband and the best way to resolve their dispute is to discuss and find out their mutual solution, instead of seeking intervention of a third party. Some times hasty steps are taken in a state of excitement either by the husband or wife when a family dispute exists, but on a subsequent cool thinking the mistake is realised. In such cases, the Courts are expected to administer justice in practical manner with a view to ensure that family ties are not broken. If the wife has started living with the husband and, she is satisfied with his behaviour and the behaviour of his relatives, then it is always in

their interest, interest of their children and the society that Court should be a party in maintaining their matrimonial relations and if criminal proceedings are allowed to be continued, it will be a mere harassment to the parties with no fruitful result. To avoid such situation, the ends of justice require that the criminal proceedings should be quashed.

9. This pragmatic approach of the Court also holds true in case of an irretrievable marriage. If the husband and wife finally decide to live separately and seek mutual divorce by consent and effective and substantial steps are taken, regarding permanent alimony for the wife and her articles and valuables of streedhan are returned and if such a wife does not want to press and pursue her criminal complaint filed under Section 498A, IPC, then I am of the considered opinion that continuance of such a criminal proceeding shall tantamount to abuse of the process of Court and that to secure ends of justice, this Court by invoking inherent power under Section 482, Cr.P.C. should quash such proceedings, which may unnecessarily prolong the litigation between the husband and wife and their relatives and may give rise to acrimonious relations between them.

10. Therefore, keeping in view all the facts and circumstances of this case, to my mind, it is a fit case wherein this Court should invoke its inherent power under Section 482, Cr.P.C. and quash the criminal proceedings pending against the petitioners.

11. In the result, I allow this petition and set aside the impugned order dated 11.12.1995 and quash the proceedings in Criminal Case No. 17148/95 State v. Kishore Kumar pending in the Court of learned Addl. Civil Judge and Judicial Magistrate No. 4, Jodhpur.