

Manoj Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-19-1998

Reported in : 1999CriLJ10

Judge : S.C. Mital, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13B and 138; Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 320(1), 320(2), 320(9) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 406, 494 and 498A

Appeal No. : Crl. Misc. Petn. No. 492 of 1998

Appellant : Manoj Kumar

Respondent : State of Rajasthan

Advocate for Def. : S.K. Vyas, Public Prosecutor

Advocate for Pet/Ap. : R.G. Purohit and; R.S. Gill, Advs.

Disposition : Petition allowed

Judgement :

ORDER

S.C. Mital, J.

1. Petitioner Manoj Kumar has preferred this petition under Section 482, Cr.P.C. against the order of the learned District & Sessions Judge, Jodhpur passed on 12-6-98 in Cr. Revision No. 1106/97 in Case No. 137/97 under Section 498A, IPC. which is pending in the Court of Additional Chief Judicial Magistrate No. 2, Jodhpur. The learned Judge dismissed the revision petition and upheld the order passed by Additional Chief Judicial Magistrate No. 2, Jodhpur taking cognizance against the petitioner for the offence under section 498A, IPC. However, the cognizance taken under section 406, IPC was set aside on the ground that the articles were already returned to the complainant.

2. Now, the brief facts necessary for the disposal of this petition may be stated :-

3. The petitioner was married to Rashmi Kalla on 8-2-96. The relations between them became strained and Rashmi Kalla lodged a report against the petitioner that she was subjected to cruelty by him and he deserted her as he was having illegal relation with some other girl Miss Parminder Kaur. Some of the articles have not been returned to her by the petitioner. A case under Section 498A and 406, IPC was registered at Police Station. Khandafalsa, Jodhpur and after investigation charge sheet was submitted against the petitioner. The learned Additional Chief Judicial Magistrate No. 2, Jodhpur took cognizance of the offences under Section 406 and 498A, IPC. The revision petition preferred by the petitioner was partly allowed as stated above. The petitioner and Rashmi Kalla submitted an application under Section 13B, [Hindu Marriage Act, 1955](#) in the Family Court, Jodhpur for divorce by consent stating therein that they are living separately and their marriage was irretrievably broken. This application was allowed and divorce was granted on 26th March, 1998. A perusal of the judgment dated 26th March, 1998 of the Family Court, Jodhpur reveals that the petitioner and Rashmi Kalla stated in their application under Section 13B, Hindu Marriage Act that they have settled their differences and dispute inspired by the spirit of Lok Adalat. No dispute regarding Stridhan, maintenance or any other expenses is pending between them.

4. The petitioner has challenged the order of learned District Judge upholding the cognizance under Section 498A, IPC on the ground that the compromise in the Family Court is a good and proper ground to terminate the proceedings under

Section 498A, IPC and the learned District Judge did not consider the judgment of this Court in S.B. Cr. Appeal No. 106/82 decided on 17-12-97. Furthermore, contracting of the second marriage is not an offence under Section 498A, IPC and the learned District Judge has also not considered various judgments on this point. According to the petitioner on consideration of all the facts and circumstances of the case, no offence under Section 498A, IPC is made out against him.

5. I have heard the learned counsel for the petitioner, learned Public Prosecutor and the learned counsel for the complainant.

6. The learned counsel for the petitioner has entered his arguments on one aspect of this case only that the parties have taken divorce decree under Section 13B of the [Hindu Marriage Act, 1955](#) from the Family Court on mutual consent. It has been mentioned in the application that their marriage had irretrievably broken and they have decided to take divorce on mutual consent. They have settled all their disputes regarding maintenance also and will not further press on other proceedings pending between them. In view of this fact the cognizance and the proceedings under Section 498A, IPC against the petitioner should be deemed to have come to an end and deserve to be quashed in the interest of justice by exercising inherent powers. He referred to the decision of Hon'ble Supreme Court Preeti Singh v. Sandeep Singh AIR 1995 SC 1851 wherein the parties filed petition for mutual divorce in terms of the order. The marriage of the petitioner and the respondent stood dissolved and divorce decree was effective from the date of the judgment. In terms of the compromise, the proceedings instituted by the parties in the Court or any authority were also ordered to have withdrawn and dismissed.

7. In Mst. Kaushila v. The State of Rajasthan (S.B. Cr. Appeal No. 106/92 decided on 17th December, 1997), this Court relying upon the decision in Prakash Chandra v. Smt. Vidhya Devi (S.B. Cr. Appeal No. 249/93, decided on 25-1-1997) granted permission to compromise the offence under Section 494, IPC on the basis of the compromise filed by the parties in the Court of A.C.J.M. Parbatsar on 17-12-94 in the proceedings under Section 125, Cr.P.C. In that compromise, the parties categorically stated that they have compromised their disputes in the spirit of Lok Adalat and a sum of Rs. 17,000/- was paid for maintenance. It was also

stated that she will compromise the case pending in the Court under Section 494, IPC. The learned Judge observed that the above contents showed that parties agreed to put an end to all the litigations and granted permission required to compromise the said offence. Thus, the proceedings under Section 494, IPC were put to an end.

8. In another case *Ram Sharan v. State of Rajasthan* 1996 Raj Cri C 349 the wife lodged a report under Section 498A against the husband in 1989 in which charges were framed against the husband. Husband and wife both filed divorce petition and a decree was passed on mutual consent on payment of a sum of Rs. 1,90,000/- permanent alimony to the wife. It was also admitted by the wife that she had received all the items of her 'Stridhan'. In view of the allegations of general nature and in the above facts and circumstances, it was held that the report lodged by the wife was a mere counter blast and case under Section 498A, IPC was not made out. Consequently, the learned Judge quashed the proceedings.

9. The learned counsel for the complainant and the learned Public Prosecutor contended that the offence under Section 498A, IPC is non-compoundable and compromise cannot be allowed under the inherent powers of the Court as laid down in 1993 Cri LR (Raj) 86: 1993 Cri LJ 3193 (FB) (*Mohan Singh v. State*). I agree with the learned counsel for the complainant and the learned Public Prosecutor that compounding of the offence not covered under Sub-section (1) and (2) of Section 320 cannot be permitted by exercising inherent powers under Section 482, Cr.P.C. The express bar laid down under Section 320(9) cannot be overridden by this Court under Section 482, Cr. P.C. Therefore, I am of the view that on the basis of the compromise or the consent divorce under Section 13B the offence Under Section 498A, IPC cannot be allowed by this Court to be compounded by the parties. However, the next question by this Court in the interest of justice or whether in the facts and circumstances of the case the continuation of the proceedings under Section 498A, IPC against the petitioner tantamounts to abuse of the process of the Court.

10. It is vehemently argued on behalf of the petitioner that the proceedings can be deemed to have been withdrawn by virtue of the divorce decree obtained by the

parties by mutual consent because in that application parties have agreed that they will not press for the other litigations pending between them. It clearly establishes that parties have settled their all disputes before taking divorce decree by mutual consent and they agreed to put an end to all the cases pending between them. It is submitted that the complainant cannot be permitted now to continue with the litigation when she agreed not to proceed with the case. It will amount to abuse of the process of the Court because she agreed for taking divorce by mutual consent and not to press for other pending litigations and thereafter she turns round to assert to pursue the litigation. It is also in the interest of justice to quash the proceedings. It is submitted on behalf of the complainant that certain articles have not been returned and the offence under Section 498A, IPC being non-compoundable, she has a right to proceed with the case.

11. I have given my earnest consideration to the rival submissions. The learned lower Court has come to the conclusion that there is no material to take cognizance for the offence under Section 406, IPC. I have perused the petition under Section 13B, Hindu Marriage Act, Civil Original Suit No. 77/98 in which complainant has clearly stated that they were filing the petition for divorce on mutual consent in order to put an end to all the disputes and strained relations between them in order to start a new lease of life. In Para 5 she has also stated that she would not claim maintenance which shows that this dispute stood resolved between the parties. She has further averred :-

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The averment, in my view clearly establishes that both the parties have settled their all the disputes and they have manifested their intention not to continue further all other litigations pending between them. In the facts and circumstances, I entirely agree with the learned counsel for the petitioner that now proceedings which have remained pending only for offence under Section 498A, IPC should stand withdrawn and dismissed in the interest of justice and also to prevent the abuse of the process of the Court. The petitioner finds support in Preeti Singh v. Sandeep Singh AIR 1995 SC 1851 (supra). I, therefore, hold that the proceedings of the Cr. Case No. 137/97 under Section 498A, IPC pending in the Court of

Additional Chief Judicial Magistrate No. 2, Jodhpur deserve to be quashed by exercising inherent powers.

12. Consequently, this petition under Section 482, Cr. P.C. is allowed. The proceeding of Cr. Case No. 137/97 under Section 498A, IPC pending in the Court of Additional Chief Judicial Magistrate No. 2, Jodhpur is hereby quashed and the order of the learned District Judge, Jodhpur dated 12-6-98 also stands quashed. The bail bonds submitted by the petitioner are cancelled.

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