

imran and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-29-2010

Judge : Vinod Prasad and; Rajesh Chandra, JJ.

Appellant : imran and ors.

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

**Rajesh Chandra, J.**

1. This writ petition has been filed under Article 226 of the Constitution of India by the petitioners Imran and others for issuing a writ, order or direction in the nature of certiorari to quash the impugned First Information Report dated 04.12.2009 in case crime No. 997 of 2009, under Sections 498-A, 323, 506 I.P.C. and 3/4 D. P. Act, P.S., Chakeri, District, Kanpur Nagar, (Annexure No. 1 to the writ petition). It has been further prayed that writ, order or direction in the nature of mandamus directing the respondents not to arrest the petitioners in the above mentioned case may also be issued.

2. The facts as are discernable from the papers filed with this writ petition are that informant Shahid Hussain lodged a First Information Report at P.S., Chakeri, District, Kanpur Nagar on 04.12.2009 at 2:00 p.m. against the petitioner Imran, his

family members and relatives mentioning therein that informant's Sister Smt. Salma Khatoon was married to the petitioner Imran on 04.01.2002 and an amount of Rs. 35 lacs was spent in the marriage. However, the husband and in-laws were not satisfied with the dowry given at the time of marriage and they started demanding a plot of 200 Sq. Yards along with Rs. 15 lacs for carrying the business. Smt. Salma Khatoon was being harassed and teased and beaten due to non-fulfillment of the said demand. When the informant expressed his inability to fulfill the demand, Smt. Salma Khatoon along with her two children was turned out from her marital home.

3. We have heard the learned Counsel for the petitioners, the learned Counsel for the respondent No. 4 as well as the learned A.G.A., Sri Karuna Nand Bajpayee.

4. In this writ petition the informant Shahid Hussain, respondent No. 4 appeared. On 26.04.2010 a compromise entered into between Imram (husband) and Smt. Salma Khatoon (wife) was produced before the Court. The execution of the compromise was ratified by Imran and Smt. Salma Khatoon.

5. In this compromise it has been mentioned that a divorce has taken place between the husband and the wife and they are living separately. It has further been mentioned that the two sons Mohd. Aman, 6 years and Mohd. Azeem, 4 years are living with their mother Smt. Salma Khatoon and they will continue to remain with her. The husband will not initiate any proceedings in any Court to take their custody. It has also been averred that the husband shall pay Rs. 6,50,000/- each for the maintenance and education of the two sons and Rs. 7,00,000/- for the maintenance of wife Smt. Salma Khatoon through three drafts and that the wife Smt. Salma Khatoon or two sons shall not be entitled to any money in future.

6. A mention was also made that the informant Shahid Hussain has lodged a report against the husband Imran and his relatives which is under challenge in this writ petition. It has further been mentioned that Ahmed Hasan a relative of husband Imran has also lodged a report against the brother and brother-in-law of the wife at P.S., Chakeri, District, Kanpur Nagar which is registered as crime No. 1001 of 2009, under Sections 323, 324, 452, 504, 506 and 147 I.P.C. In this compromise the husband and wife have agreed that they will do all that is

necessary for the withdrawal of the case so that the matter ends forever. In the case crime No. 1001 of 2009 at P.S., Chakeri, the police has submitted a final report in the Court of Chief Metropolitan Magistrate, Kanpur Nagar, wherein the informant of the case namely Ahmad Hasan shall move an application or the affidavit as the case may be. Similarly, the informant Shahid Hussain will make all endeavors for the disposal of the case under Section 498-A I.P.C. etc. registered at crime No. 997 of 2009 at P.S., Chakeri. It has also been mentioned that since the husband Imran is in jail in crime No. 997 of 2009 hence his bail application No. 6532 of 2010 (Imran v. State of U.P. and Ors.) has been filed in the High Court, Allahabad, in which the hearing is yet to take place. The above said compromise has been signed by the witnesses Ahmad Hasan, Shahid Hussain, Mohd. Moin and Sageer Ahmad.

7. On 26.04.2010 the husband Imran submitted three drafts of the above said amount and the same were handed over to the wife Smt. Salma Khatoon as per the terms of the above said compromise.

8. It is clear from the above noted facts that the parties have redressed their grievance with the help of family friends as well as elderly people of the Muslim Community.

9. It has been held by the Apex Court in Madan Mohan Abbot v. State of Punjab (2008) 2 SCC (Cri.) 464 as under:

It is advisable in the disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceeding as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

10. Hon'ble the Supreme Court in G.V. Rao v. L.H.V. Prasad 2000 SCC (Cri.) 733 observed as under:

There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about re-approachment are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts.

11. Hon'ble the Court further observed as under:

Section 498-A was added with a view to punish a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter-productive and would act against the object for which this provision was added. There is very likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

12. Hon'ble the Supreme Court in B.S. Joshi v. State of Harayana A.I.R. 2003 Supreme Court 1386 referred its another judgment rendered in State of Karnataka v. L. Muniswamy and Ors. : (1977) 2 SCC 699 and held as under:

In the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that

without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. Answer clearly has to be in 'negative'.

13. In view of the above judgments of the Hon'ble the Supreme Court, it is clear that in cases where the parties have settled their disputes amicably the High Court should not hesitate in quashing the criminal proceedings so as to secure the ends of justice.

14. In the circumstances noted above the F.I.R. of crime No. 997 of 2009 under Sections 498-A, 323, 506 I.P.C. and 3/4 D.P. Act, P.S., Chakeri, District, Kanpur Nagar against the petitioners Imran and others are quashed. It is further directed that Chief Metropolitan Magistrate, Kanpur Nagar in whose Court the final report has been submitted by the police in crime No. 1001 of 2009 under Sections 323, 324, 452, 504, 506 and 147 I.P.C., P.S., Chakeri, District, Kanpur Nagar, to accept final report within three days after receiving the copy of this order.

15. The petitioner Imran, who is confined in jail in crime No. 997/2009, under Sections 498-A, 323, 506 I.P.C. and 3/4 D.P. Act, P.S., Chakeri, District, Kanpur

Nagar is directed to be released from jail confinement forthwith.

16. This writ petition is allowed as above.

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