

Jitender Kumar and ors. Vs. State of N.C.T. of Delhi and anr.

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Court : Delhi

Decided On : Apr-20-2010

Judge : S.N. Aggarwal, J.

Acts : Dowry Prohibition Act - Sections 3 and 4; ;Hindu Marriage Act; ;Indian Penal Code (IPC) - Sections 34, 406 and 498A

Appeal No. : Crl.M.C. No. 3121/2009

Appellant : Jitender Kumar and ors.

Respondent : State of N.C.T. of Delhi and anr.

Advocate for Def. : R.N. Vats, Additional Public Prosecutor and; Pratibha, SI, Police Station Mehrauli

Advocate for Pet/Ap. : Harsh Vardhan Surana, Adv.

Disposition : Petition allowed

Judgement :

S.N. Aggarwal, J.

1. This is a petition filed by the petitioners for quashing of criminal case against them under Sections 498-A/406/34 IPC and Sections 3 & 4 of the Dowry Prohibition Act in the Court of Ms. Veena Rani, Metropolitan Magistrate, Delhi. The

FIR in question is sought to be quashed on the basis of compromise arrived at between the parties reduced into writing in a compromise deed which is Annexure P-2 at page 20 of the paper book.

2. This petition was heard on the last date, i.e., 16.04.2010, when respondent No. 2, being the complainant, on whose complaint the FIR in question was registered against the petitioners, was also present. The marriage between the petitioner No. 1 and respondent No. 2 had taken place on 23.11.1999. No child was born from their wedlock. On account of matrimonial dispute between them, they started living separate since July 2000. This led to registration of FIR in question under Sections 498-A/406/34 IPC and Sections 3 & 4 of the Dowry Prohibition Act against the petitioners by respondent No. 2 with Police Station Mehrauli.

3. During pendency of the criminal case under Sections 498-A/406/34 IPC and Sections 3 & 4 of the Dowry Prohibition Act against the petitioners, the respondent No. 2 is stated to have settled her matrimonial dispute with the petitioners and pursuant thereto, she has agreed for divorce by mutual consent on petitioners paying her an amount of Rs. 50,000/- in full and final settlement of all her claims on account of return of dowry and istridhan articles including her claim for past, present & future maintenance. This compromise between the parties was reduced into writing by way of compromise deed dated 06.03.2009 (Annexure P-2 at page 20 of the paper book) followed by a memorandum of understanding dated 16.04.2009 (Annexure P-3 at page 23 of the paper book). On the basis of this compromise between the parties, the marriage of respondent No. 2 with petitioner No. 1 has already been dissolved by a decree of divorce by mutual consent dated 16.11.2009 in Hindu Marriage Act case No. 607/2009. In the decree of divorce by mutual consent granted to the parties, the Court has taken note of the settlement arrived at between the parties. It has been observed in the decree that the compromise between the parties is without any pressure, force, fraud or coercion on respondent No. 2. It appears that the compromise has already been acted upon by the parties.

4. The settlement between the parties was for an amount of Rs. 50,000/-, out of which Rs. 25,000/- stood already paid to her by the time the present petition was

taken up for hearing on the last date, i.e., 16.04.2010. On that date, the petitioners had offered the balance compromise amount of Rs. 25,000/- to the respondent No. 2 in terms of settlement, which she had refused to accept stating that before accepting the balance compromise amount, she wants to consult her lawyer. At her request, the case was adjourned on that date for today making it clear that in case the counsel for the respondent No. 2 does not come today, then in that event the Court will proceed to hear the matter on the basis of material already on record. Strangely enough, neither respondent No. 2 is present nor her counsel has appeared when the case was taken up for hearing today. Under the circumstances, the Court is left with no option but to proceed to hear the matter on the basis of material already on record. The compromise between the parties has already been acted upon inasmuch as the decree of divorce by mutual consent has already been granted to the couple on the basis of their compromise. It appears that after entering into a settlement, the respondent No. 2 has turned dishonest by not cooperating in quashing of criminal case filed by her against the petitioners. One of the terms of compromise between the parties as contained in the memorandum of understanding (Annexure P-3 at page 23 of the paper book) is extracted below:

And whereas the second party further undertakes to file a petition at the Hon'ble High Court of Delhi for quashing of the FIR No. 658/01, Under Section 498-A/406/34 IPC, read with Section 3/4 Dowry Prohibition Act, registered at P.S. Mehrauli, pending trial in the court of Ms. Veena Rani, Ld. M.M. Patiala House Courts, New Delhi.

5. A perusal of the above undertaking given by respondent No. 2 at the time of compromise would reveal that the respondent No. 2, being the complainant, had undertaken to get the criminal case vide FIR in question pending against the petitioners quashed. The conduct of respondent No. 2 in going beyond the terms of compromise contained in the settlement documents referred hereinabove impels this Court to accept the request of the petitioners for quashing of criminal case pending against them. The respondent No. 2 cannot be permitted to take advantage of her own wrong and abuse the legal machinery by continuing with the criminal proceedings against the petitioners after entering into a settlement with

them which has also been acted upon substantially.

6. In the facts and circumstances of the case stated hereinabove, this petition is allowed. The balance compromise amount of Rs. 25,000/- that remained unpaid to the respondent No. 2 is directed to be deposited by the petitioners with the Registrar General of this Court within a week's time so that the same may be released in favour of respondent No. 2 as and when she may approach the Court for the said purpose. The FIR No. 658/2001 under Sections 498-A/406/34 IPC and Sections 3 & 4 of the Dowry Prohibition Act with Police Station Mehrauli is quashed. The criminal proceedings arising out of the said FIR stated to be pending in the Court of Ms. Veena Rani, Metropolitan Magistrate, Delhi, are ordered to be dropped.

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