

Court No. - 70

Case :- APPLICATION U/S 482 No. - 36199 of 2019

Applicant :- Mohd. Kafeel And 5 Others

Opposite Party :- State Of Up And Anr

Counsel for Applicant :- Ashok Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

Heard learned counsel appearing on behalf of applicants, Mr. Manoj Tiwari, learned counsel for opposite party No. 2 and learned Additional Government Advocate representing the State.

By means of this application under section 482 of the Code of Criminal Procedure, the applicants have invoked the inherent jurisdiction of this Court for quashing of the order dated 28.8.2019 passed by learned Additional District and Sessions Judge, Hapur in Sessions Trial No. 1350 of 2013 (State vs. Kafeel and others) arising out of Case Crime No. 422 of 2009, under Sections 498-A, 323, 504, 506, 316 IPC and 3/4 Dowry Prohibition Act, police station Simbhawali, district Hapur, whereby compromise application dated 28.8.2019 of the applicants has been rejected.

It is submitted by learned counsel for the applicants that marriage of Mrs. Kishwar Jahan elder daughter of opposite party No. 2 was solemnized with applicant No. 1, Mohd Kafeel and marriage of Mrs. Akleema, younger daughter of opposite party No. 2 was solemnized with applicant No. 2, Shah Alam in the year 2004, but on account of acrimonious relation of daughters of opposite party No. 2, first information report was lodged on 19.12.2009 by opposite party No. 2 with regard to harassment and torture of his daughters by the accused-persons in her matrimonial home, in which charge sheet was submitted and trial proceeded against the applicants/accused persons. In the trial, prosecution witnesses have been examined and the case is pending at the stage of defence evidence. In the meantime, the parties concerned have settled their dispute outside the court on 19.9.2017, and pursuant to said settlement, Case No. 63 of 2015 under Section 125(3) Cr.P.C. filed by Mrs. Kishwar Jahan and Case No. 89 of 2015 under Section 125(3) Cr.P.C. filed by Mrs. Akleena have been dismissed vide orders dated 22.4.2018 and 19.9.2017 respectively. Thereafter, compromise application dated 28.8.2019 was also filed by the parties concerned before the trial court praying therein to decide the case in terms of compromise. It is also submitted that after

compromise both daughter of opposite party No. 2 are living with applicant No. 1 and applicant No. 2 respectively in their matrimonial home and now there is no dispute of any kind between the parties concerned, but the said compromise application dated 28.8.2019 has been rejected by the Additional District and Sessions Judge, Hapur vide impugned order dated 28.8.2019 on the ground that offence under Sections 498-A, 323, 504, 506 and 316 IPC and 3/4 Dowry Prohibition Act are non-compoundable.

The main substratum of argument of learned counsel for the applicants is that it is a matrimonial dispute between the husbands and wives and after settlement of the matrimonial dispute, they are living together and leading their life happily along with their children, therefore, the trial court has committed legal error in rejecting the compromise application of the applicants in the matter.

It is also submitted that on account of compromise entered into between the parties concerned, all disputes between them have come to an end, and therefore, further proceedings against the applicants in the aforesaid case is liable to be quashed by this Court.

Learned Additional Government Advocate as well as learned counsel appearing on behalf of opposite party No.2 do not dispute the aforesaid fact. Learned counsel for opposite party No. 2 has also submitted at the Bar that since the parties concerned have settled their dispute as mentioned above, therefore, opposite party No.2 has no grievance and objection if the impugned criminal proceedings against the applicants are quashed.

After having heard the arguments of learned counsel for the parties, before proceedings further, it is apposite to give reference of some judgments of the Apex Court, wherein the Apex Court has laid down the guideline for quashing of criminal proceedings arising out of non-compoundable offences under Section 320 Cr.P.C. on the basis of compromise and amicable settlement of matrimonial cases between the parties concerned, which are as follows:-

(i) The Apex Court in case of ***B.S. Joshi and others Vs. State of Haryana and another*** (2003) 1 SCC (Cri) 848 gave its approving nod to the existence and exercise of High Court's power to quash the criminal proceedings on compromise in suitable matrimonial cases. Paragraph nos. 14 and 15 of the said judgment are reproduced herein-below:-

"14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing 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 interests of women and against the object for which this provision was added. There is every 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 XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

(ii) The Apex Court in case of **State of Madhya Pradesh Vs. Laxmi Narayan and others**, AIR 2019 SC 1296, considering previous judgments and section 320 Cr.P.C. has laid down guideline for exercising the inherent power under Section 482 Cr.P.C. in case of settlement of dispute between the parties concerned. Paragraph no. 13 of the said judgment is reproduced herein-below:-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

(i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc., which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely

because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein-above;

(v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

On going through the judgments referred herein above makes it very clear that even in the cases which involved non compoundable offences, their quashing has been approved by the Apex Court if the nature of the offence is such which does not have grave and wider social ramifications and where the dispute is more or less confined between the litigating parties. The inherent jurisdiction of this Court may be suitably exercised if the parties inter-se have mutually decided to bury the hatchet and settle the matter amicably in between them in a criminal litigation emanating from matrimonial disputes, which are quintessentially of civil nature and other criminal litigations, which do not have grave and deleterious social fall-outs. The Court in the wider public interest may suitably exercise its power in appropriate case and terminate the pending proceedings in order to secure ends of justice or to prevent an abuse of the process of any court. Such positive exercise of the inherent jurisdiction can also find its vindication in a more pragmatic reason. When the complainant of a case or the victim of the offence itself expresses its resolve not to give evidence against the accused in the back drop of the compromise between the parties inter-se or if the fact of inter-se compromise in between the parties is apparent on the face of record, and they are still called upon to depose in the Court, they in all probability, go back on their words and resile from their previous statements, the truthfulness of which is best known only to themselves. They are in such circumstances very likely to eat their words and perjure themselves. The solemn

proceedings of the Court often get reduced to a sham exercise and farce in such circumstances. The proceedings can hardly be taken to their logical culmination and in such circumstances, the prospect of the conviction gets lost.

The object of criminal law is primarily to visit the offender with certain consequences. He may be made to suffer punishment or by paying compensation to the victim, but the law at the same time also provides that it may not be necessary in every criminal offence to mete out punishment, particularly, if the parties concerned wants to bury the hatchet. If they want to move on in a matrimonial dispute on the basis of compromise, they may be allowed to compound the offences in terms of settlement.

After compromise/settlement arrived at between the parties in the present case, the chance of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution against the applicants to continue, as the same would be futile exercise and a sheer wastage of precious time of the Court. The continuation of a criminal proceedings after compromise would cause oppression and prejudice to the parties concerned.

Considering the facts and circumstances of the case in the light of dictum and guideline laid down by the Apex Court as mentioned above, this Court feels that this is a fit case, where this Court can exercise its inherent power to secure the end of justice. In view of above interest of justice would be met, if the prayer of parties is acceded to and the criminal proceedings and other litigation between the parties is brought to an end.

As a fallout and consequence of above discussions, further proceedings of Sessions Trial No. 1350 of 2013 (State vs. Kafeel and others) arising out of Case Crime No. 422 of 2009, under Sections 498-A, 323, 504, 506, 316 IPC and 3/4 Dowry Prohibition Act, police station Simbhawali, district Hapur against the applicants are hereby quashed.

The instant application under Section 482 Cr.P.C. is allowed in terms of compromise as mentioned above.

Order Date :- 1.10.2019

Sumaira