

Allahabad High Court

Parth Chakravorty And 2 Others vs State Of U.P. And Another on 30 June, 2021

Bench: Sanjay Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- APPLICATION U/S 482 No. - 8 of 2021

Applicant :- Parth Chakravorty And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Mithilesh Kumar Shukla,Avanish Kumar Shukla

Counsel for Opposite Party :- G.A.,Rajendra Kumar Srivastava

Hon'ble Sanjay Kumar Singh,J.

Heard learned counsel for the applicants, learned Additional Government Advocate for the State/opposite party No.1 and learned counsel for opposite party No. 2 through video conferencing and perused the record with the assistance of learned counsel for the parties.

This application under Section 482 Cr.P.C. has been filed by the applicants to quash the entire proceeding of Criminal Case No. 287/2017, State Versus Parth Chakravorty and others, under Section 498A/323/406/506 I.P.C. and 3/4 D.P. Act, Police Station Mahila Thana, District-Jhansi, (arising out of Case Crime No. 70 of 2016) pending in the court of Civil Judge (J.D.)/Judicial Magistrate, Jhansi on the basis of compromise between the parties concerned.

Filtering out unnecessary details, the basic facts, in brief, which are necessary for disposal of this case are that there is a matrimonial dispute between the applicants and opposite party No.2 Applicant nos. 1, 2 and 3 are husband, father-in-law and mother-in-law of opposite party No. 2 (Smt. Sonami Chakravorty). Marriage of applicant No. 1 was solemnized with opposite party No. 2 on 21.01.2016, but on account of acrimonious relation between them their marriage was not successful, therefore, opposite party No. 2 lodged F.I.R. on 30.09.2016 against the applicants as Case Crime No. 0070 of 2016 at P.S. Mahila Thana, Jhansi making allegation inter alia that on account of demand of dowry she was harassed by the accused persons in her matrimonial home. On

13.09.2016, she was thrown away from her matrimonial home. Investigating officer after investigation submitted charge sheet on 18.01.2017 against the applicants, on which the learned Magistrate concerned took cognizance on 14.02.2017. The opposite party No. 2 has also filed Miscellaneous Case No. 4059 of 2020, under Section 12 of Domestic Violence Act before the court of Chief Judicial Magistrate, Court No. 18, Barabanki. Thereafter parties concerned entered into compromise outside the court, as a result thereof opposite party No. 2 did not press her Case No. 4059 of 2020, under Section 12 of Domestic Violence Act and accordingly, the proceeding of the same has come to an end vide order dated 18.10.2020. On 21.09.2020, applicants and opposite party No. 2 jointly filed an application under Section 13-B of Hindu Marriage Act, 1955 for dissolution of their marriage before the Principal Judge, Family Court, Barabanki. Thereafter the instant application under Section 482 Cr.P.C. has been preferred by the applicants for the relief as mentioned above.

Learned counsel for the applicants has drawn the attention of the Court to the interim order dated 12.01.2021 passed by this Court, whereby upon being informed about the factum of inter-se compromise in between the parties concerned, the concerned court below was directed to verify the factum of compromise between the parties concerned. The said order dated 12.01.2021 is being reproduced herein-below:-

"Sri Rajendra Kumar Srivastava, Advocate has filed a compromise counter affidavit along with Vakalatnama on behalf of opposite party no. 2 in Court today, which is taken on record.

Heard Sri Avanish Kumar Shukla, learned counsel for the applicants and learned A.G.A. for the State.

The present 482 Cr.P.C. application has been filed to quash the entire proceedings of Criminal Case No. 287 of 2017 (State Vs. Parth Chakravorty and others), arising out of Case Crime No. 70 of 2016, under Sections- 498A, 323, 406, 506 I.P.C. and Section 3/4 D.P. Act, Police Station- Mahila Thana, District- Jhansi, pending in the court of Civil Judge (J.D.)/Judicial Magistrate, Jhansi.

This is the second application under Section 482 Cr.P.C. and the same is maintainable in the peculiar circumstances of the case and in support of his submission he has relied upon the judgment of the Hon'ble Apex Court passed in the case of Anil Khadkiwala Vs. State (Government of NCT Delhi) and Another reported in 2019 (8) JT 16.

Learned counsel for the applicants submits that since the charge sheet had been submitted, the parties have reconciled their differences and a compromise has been entered between them but the compromise deed has not been filed by the applicant.

Learned counsel appearing for opposite party no. 2 does not dispute the correctness of the submissions so advanced by learned counsel for the applicants.

Let a proper compromise application be filed before the trial court/court concerned along with certified copy of this order and the trial court may fix a date for the verification of the compromise

entered into between the parties and after ensuring the presence of the parties, pass an appropriate order with respect to the verification within a period of four weeks from today. Upon due verification, the court below shall send its report to this Court.

Put up this case on 26th February, 2021 as fresh.

Till the next date of listing, no coercive action shall be taken against the applicants."

It is submitted by learned counsel for the applicants that pursuant to aforesaid order dated 12.01.2021 both the parties appeared before the trial court and filed compromise affidavit which has been verified by the concerned court below by order dated 20.01.2021, filed as Annexure No. S.A.-3 to the supplementary affidavit. The factum of compromise has been admitted by the opposite party No. 2 in para 3 of her counter affidavit.

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 has no objection in quashing the impugned criminal proceedings against the applicants.

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 impact 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 judgements 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 backdrop 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 want 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, the entire proceeding of Criminal Case No. 287/2017, State Versus Parth Chakravorty and others, under Section 498A/323/406/506 I.P.C. and 3/4 D.P. Act, Police Station Mahila Thana, District-Jhansi, (arising out of Case Crime No. 70 of 2016) pending in the court of Civil Judge (J.D.)/Judicial Magistrate, Jhansi 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 :- 30.6.2021 Sunil Kr. Gupta