Supreme Court of India B.S. Joshi & Ors vs State Of Haryana & Anr on 13 March, 2003 Author: Y Sabharwal Bench: Y.K. Sabharwal, H.K. Sema. CASE NO.: Appeal (crl.) 383 of 2003

PETITIONER: B.S. Joshi & Ors.

RESPONDENT: State of Haryana & Anr.

DATE OF JUDGMENT: 13/03/2003

BENCH: Y.K. Sabharwal & H.K. Sema.

JUDGMENT: J U D G M E N T [Arising Out of SLP (Crl.) No.3416 of 2002] Y.K. Sabharwal, J. Leave granted. The question that falls for determination in the instant case is about the ambit of the inherent powers of the High Courts under Section 482, Code of Criminal Procedure (Code) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. The scope and ambit of power under Section 482 has been examined by this Court in catena of earlier decisions but in the present case that is required to be considered in relation to matrimonial disputes. The matrimonial disputes of the kind in the present case have been on considerable increase in recent times resulting in filing of complaints by the wife under Sections 498A and 406, IPC not only against the husband but his other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High Court and jointly pray for quashing of the criminal proceedings or the First Information Report or complaint filed by the wife under Sections 498A and 406, IPC, can the prayer be declined on the ground that since the offences are non-compoundable under Section 320 of the Code and, therefore, it is not permissible for the Court to quash the criminal proceedings or FIR or complaint. The facts here are not in dispute. Appellant No.4 is the husband. Respondent No.2 is his wife. Their marriage had taken place on 21st July, 1999. They are living separately since 15th July, 2000. Appellant Nos. 1 to 3 are father, mother and younger brother of appellant No.4. FIR No.8 of 2002 was registered under Section 498A/323 and 406 IPC at Police Station, Central Faridabad at the instance of the wife on 2nd January, 2002. She has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. According to that affidavit, her disputes with the appellants have been finally settled and she and Appellant No.4 have agreed for mutual divorce. The affidavit further states that on filing of the petition for mutual divorce, statements on first motion were recorded on 18th July, 2002 and 2nd September, 2002. Also that in second motion filed by the parties to the marriage, their statements were recorded by the Court of Additional District Judge, Delhi on 13th September, 2002. Counsel for respondent No.2 supporting the appeal also prays for quashing of the FIR. There is, however, serious opposition on behalf of the State. The High Court has, by the impugned judgment, dismissed the petition filed by the appellants seeking quashing of the FIR for in view of the High Court the offences under

Sections 498A and 406 IPC are non-compoundable and the inherent powers under Section 482 of the Code cannot be invoked to bypass the mandatory provision of Section 320 of the Code. For its view, the High Court has referred to and relied upon the decisions of this Court in State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp.(1) SCC 335]; Madhu Limaye v. The State of Maharashtra [(1977) 4 SCC 551; and Surendra Nath Mohanty & Anr. v. State of Orissa [AIR 1999 SC 2181]. After reproducing the seven categories of cases as given in para 102 of Bhajan Lal's case, the High Court has held that the parameters, principles and guidelines for quashing of complaints, first information report and criminal proceedings have been settled in terms thereof and has concluded therefrom that the instant case does not fall in any of the said categories. It is quite clear that the High Court has lost sight of the earlier part of para 102 which made it abundantly clear that the said categories of cases were being given by way of illustration. Neither the categories of cases given were exhaustive nor it could be so. Before giving those categories, it was said in Bhajan Lal's case that : "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised." In Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749], this Court with reference to Bhajan Lal's case observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. The High Court has relied upon Madhu Limaye's case for coming to the conclusion that since the offences under Sections 498A and 406 IPC are non-compoundable, i t would be impermissible in law to quash the FIR on the ground that there has be en a settlement between the parties. The decision in Madhu Limaye's case has be en misread and misapplied by the High Court. The question considered in that ca se was when there was a bar on the power of revision in relation to any interloc utory order passed in an appeal, enquiry, trial or other proceedings, what would be its effect on exercise of power under Section 482 of the Code. Sub-section (2) of Section 397 of Cr.P.C providing that the power of revision conferred by s ub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings was noticed and it was held that on

a plain reading of Section 482, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". The Court said that if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers but adopting a harmonious approach held that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. It was further held that, then, in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redressal of the grievance of the aggrieved party. In Madhu Limaye's case, it was, inter alia, said that if for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. By way of illustration, an example was given where without jurisdiction the Court takes cognizance or issues process and assumes it to be an interlocutory order, would it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceedings as early as possible, since being an interlocutory order, it was not revisable and resultantly the accused had to be harassed up to the end, though the order taking cognizance or issuing process was without jurisdiction. It was held that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extra ordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. The High Court has also relied upon the decision in case of Surendra Nath Mohanty's case (supra) for the proposition that offence declared to be non-compoundable cannot be compounded at all even with the permission of the Court. That is of course so. The offences which can be compounded are mentioned in Section 320. Those offences which are not mentioned therein cannot be permitted to be compounded. In Mohanty's case, the appellants were convicted by the trial court for offence under Section 307. The High Court altered the conviction of the appellants and convicted them for offence under Section 326 and imposed sentence of six months. The trial court had sentenced the appellants for a period of five years RI. The application for compounding was, however, dismissed by the High Court. This Court holding that the offence for which the appellants had been convicted was non-compoundable and, therefore, it could not be permitted to be compounded but considering that the parties had settled their dispute outside the court, the sentence was reduced to the period already undergone. It is, however, to be borne in mind that in the present case the appellants

had not sought compounding of the offences. They had approached the Court seeking quashing of FIR under the circumstanced abovestated. In State of Karnataka v. L. Muniswamy & Ors. [(1977) 2 SCC 699], considering th e scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proce edings if it comes to the conclusion that ends of justice so require. It was ob served 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'. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. In Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. [(1988) 1 SCC 692], it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad & Ors. [(2000) 3 SCC 693] are very apt for determining the approach required to be kept

in view in matrimonial dispute by the courts, it was said that 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 rapprochement 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. 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. 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. For the foregoing reasons, we set aside the impugned judgment and allow the appeal and quash the FIR above mentioned.