

# Sameer Mulani And Ors. vs State Of U.P.Thru.Secy.Home Lucknow ... on 28 March, 2022

**Author: Rakesh Srivastava**

**Bench: Rakesh Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 21974 of 2021

Petitioner :- Sameer Mulani And Ors.

Respondent :- State Of U.P.Thru.Secy.Home Lucknow And Ors.

Counsel for Petitioner :- Arshad Khan, Feroz Abdurrahim Shaikh, Imran Ahamad Khan

Counsel for Respondent :- G.A., Ajay Madhavan, Piyush Agnihotri, Praveen Singh, R.K. Singh, R.

Hon'ble Rakesh Srivastava, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. By means of this writ petition the Petitioners are seeking quashing of a first information report registered against them on 14.09.2019 as Case Crime No. 0185 of 2019 at the Mahila Thana Police Station, District Lucknow for the offences punishable under Sections 498A, 323, 504, 506 406 of the Indian Penal Code, 1860, 3/4 Dowry Prohibition Act, 1961 and 3/4 The Muslim Women (Protection of Rights on Marriage) Act, 2019. The third respondent is the complainant.

2. Sameer Mulani, the first petitioner and Farhana Parveen, the third respondent were married to each other as per Muslim Rituals on 22.02.2010. Soon after the marriage, differences arose between them to such an extent that the third respondent left her matrimonial home and has been living with her parents. On 24.06.2011, while living with her parents, the third respondent was blessed with a

girl child. On 14.09.2019 the third respondent lodged a first information report mentioned above against her husband (first petitioner), his mother (second petitioner), his sisters (third and fourth petitioners) and his uncle (fifth respondent).

3. This Court vide its order dated 28.09.2021, passed in the present writ petition, referred the matter to the Mediation and Conciliation Centre of this Court (for short the "Mediation Centre") to explore the possibility of an amicable settlement between the parties. The relevant portion of the order dated 28.09.2021 is extracted below:-

"It has been argued by learned counsel for the petitioners that the marriage between respondent no.3 and petitioner no.1 was solemnized in the year 2010 and from the said wedlock a female child was born. It is stated that respondent no.3 (wife) has deserted the petitioner no.1 and her family members soon after the marriage because of some matrimonial dispute arose between the parties. He further states that the petitioners are resident of Mumbai and petitioner no.1 (husband), at present moment is residing at Singapore as he employed there. He next argued that the petitioners have made several efforts for mediation, but due to illegal demand of money from the side of respondent no.3, the mediation could not be arrived at between the parties.

\* \* \* Learned counsel for the petitioners states that the petitioners are ready for mediation and the present matter may be referred to Mediation & Conciliation Centre of this Court. He further states that he is concerned about the welfare of female child and just to show his bonafides he is ready to pay Rs.25 lacs for the mediation purposes before the Mediation Centre of this Court.

Learned counsel for the private respondent has no objection to the same.

Taking into account the statement of learned counsel for the petitioners, it is directed that the petitioner no.3, who is stated to be sister of petitioner no.1 (husband), shall appear before the Mediation Centre of this Court for mediation with respondent no.3 (wife of petitioner no.1)- Farhana Parveen on 25.10.2021 subject to the condition that Rs.25 lacs shall be deposited by the petitioner no.1 to the Mediation Centre of this Court within two weeks from today, and out of the said amount, Rs.5,00,000/- shall be paid to respondent no.3/wife on her appearance before the Mediation Centre. It is also open for the parties that the petitioner no.1 joins the mediation proceedings through video conferencing."

4. Pursuant to the said order, the first petitioner deposited a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) before the Mediation Centre. The third petitioner and the third respondent appeared before the Mediation Centre. As per the mediation report, the parties have entered into a settlement agreement dated 16.03.2022. The original settlement agreement signed by the third petitioner on behalf of all the petitioners, the third respondent, their counsel and the mediator is on record.

5. Under this compromise the first petitioner and the third respondent have agreed to dissolve their marriage. It has been agreed that the custody of the child, namely, Maisara Fatima shall remain with the third respondent (mother) who shall look after her. It has been further agreed that the first petitioner shall pay a sum of Rs.30,00,000/- (Rupees thirty lakhs only) to the third respondent in full and final settlement of all disputes with the clear understanding that all litigation pending between them (civil or criminal) will terminate.

6. Sri Arshad Khan, learned counsel for the Petitioners has contended that the continuance of the proceedings after the compromise arrived at between the parties would be a futile exercise. Sri Ajay Madhavan, learned counsel for the third respondent, supporting the stance of the petitioners, also prays for quashing of the first information report. However, Ms. Ruhi Siddiqui, the learned Additional Government Advocate for the State-Respondents has seriously opposed the petition.

7. Sections 323, 504, 506 of the Code are compoundable offences. It is true that Sections 498A and 406 are not compoundable.

8. The scope and ambit of the power of the High Courts under Section 482 of the Code of Criminal Procedure (the Code) read with Articles 226 and 227 of the Constitution to quash criminal proceedings has been examined by the Apex Court in a catena of decisions. It is now well settled that this inherent and wholesome power can be exercised by the High Courts where it comes to the conclusion that "allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.'

9. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692, the Apex Court observed that the Courts should also 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. It was observed that where in the opinion of the Court chances of an ultimate conviction are 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 proceeding even though it may be at a preliminary stage.

10. In yet another case reported in *Gold Quest International (P) Ltd. v. State of T.N.*, (2014) 15 SCC 235, the Apex Court has observed as under:

"8. In view of the principle laid down by this Court in the aforesaid cases, we are of the view that in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 CrPC read with Article 226 of the Constitution."

(emphasis supplied)

11. In *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675, the Apex Court while quashing a first information report lodged by the wife against her husband for the offences under Sections 498 and 406 of the Code, considered the scope and ambit of the power under Section 482 of the Code read with Articles 226 and 227 of the Constitution in relation to matrimonial disputes and after holding that the special features as stated in *Madhavrao Jiwajirao Scindia* (supra) are evident in matrimonial matters observed as under:

"12. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different context, in *G.V. Rao v. L.H.V. Prasad* are very apt for determining the approach required to be kept in view in a 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.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code, 1860 was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A 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 hypertechnical view would be counterproductive 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 XX-A of the Penal Code, 1860."

(emphasis supplied)

12. In *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, a three-Judge Bench of the Apex Court after reviewing the law on the subject held:

"61. .... In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even

though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim."

13. In *Jitendra Raghuvanshi v. Babita Raghuvanshi*, (2013) 4 SCC 58, the Apex Court in the context of matrimonial disputes has held as under:

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction."

(emphasis supplied)

14. In the case at hand, the dispute between the parties is purely a matrimonial dispute which has arisen between the first petitioner and the third respondent. The said matrimonial dispute has been voluntarily, mutually and amicably settled between the parties vide compromise dated 16.03.2022. In terms of the said compromise the first petitioner has paid a sum of Rs.30,00,000/- (Rupees

thirty lakhs only) to the third respondent towards full and final settlement of her monetary claim. The fact that the first petitioner has paid the agreed amount to the third respondent is recorded in the settlement agreement dated 16.03.2022. The relevant portion of the settlement agreement dated 16.03.2022 is extracted below:-

"D) That in compliance of Hon'ble Court's order dated 28.09.2021 a sum of Rs.25,00,000/- (Rupees Twenty Five Lakh only) has been deposited by Sameer Mulani (Petitioner No.1) and a sum of Rs.5,00,000/- (Rupees Five Lakh Only) has already been paid to Mrs. Farhana Parveen (Respondent No.3) through the office of Mediation & Conciliation Centre.

E) That out of the deposited sum of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) the remaining amount of Rs.20,00,000/- (Rupees Twenty Lakh Only) may be released in favour of Mrs. Farhana Parveen (Respondent No.3) by Hon'ble Court.

F) That out of the entire alimony of Rs.30,00,000/- (Rupees Thirty Lakh Only), the remaining sum of Rs.5,00,000/- (Rupees Five Lakh Only) has been received by Mrs. Farhana Parveen (Respondent No.3) today i.e. 16.03.2022 by way of a demand draft, the detail of which is as under:

I) D.D. No.051547 dated 14.03.2022 in the name of Farhana Parveen drawn at Canara Bank, Branch-Kurla, West Mumbai."

15. Bearing in mind the principles laid down by the Apex Court in the decisions mentioned above, in the facts and circumstances of the case, continuance of the prosecution where the complainant herself is not ready to support the allegations will be a futile exercise and will be an abuse of the judicial process. On the contrary, the denial of prayer for quashing of the first information report would only aggravate the agony of the parties.

16. Accordingly, the writ petition is allowed.

17. The first information report dated 14.09.2019 bearing as Case Crime No. 0185 of 2019 at Mahila Thana Police Station, District Lucknow for the offences punishable under Sections 498A, 323, 504, 506, 406 of the Indian Penal Code, 1860, 3/4 Dowry Prohibition Act, 1961 and 3/4 The Muslim Women (Protection of Rights on Marriage) Act, 2019 and all proceedings emanating therefrom are quashed.

18. The sum of Rs.20,00,000/- (Rupees twenty lakhs only) deposited by the first petitioner before the Mediation Centre shall be released in favour of the third respondent forthwith.

Order Date :- 28.03.2022

(Ajai Kumar Srivastava-I, J.) (Rakesh Srivastava,J.)

