

Mohd Kasim And Anr vs State Of Nct Of Delhi And Anr on 5 January, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 43/2024

MOHD KASIM AND ANR

Through: Mr. Aman Mirza and
Advocates along with Petitioners

STATE OF NCT OF DELHI AND ANR

Through: Ms. Nandita Rao,
Mr. Amit Peswani, Advocate
Raghuraj Singh and SI Sumi
Vihar.

Respondent No.2 in person.

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W.P.(CRL) 55/2024

MOHD KASIM AND ANR

Through: Mr. Aman Mirza and
Advocates along with Petitioners
versus

STATE OF NCT OF DELHI AND ANR

Through: Ms. Nandita Rao,
Mr. Amit Peswani, Advocate
Gaurav, P.S. Saket.

Respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 05.01.2024 CRL.M.A. 387/2024 (exemption) in W.P.(CRL) 43/2024 CRL.M.A. 460/2024 (exemption) in W.P.(CRL) 55/2024

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

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3. W.P.(CRL) 43/2024 has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.217/2015 dated 12.04.2015 registered under Sections 498A/406/34 IPC at PS: Sangam Vihar including proceedings emanating therefrom.

4. W.P.(CRL) 55/2024 has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.577/2016 dated 02.09.2016 registered under Sections 323/354/506/34 IPC at PS: Saket including proceedings emanating therefrom.

5. Marriage between Petitioner No.1 and Respondent No. 2 was solemnized on 06.04.2014 according to Muslim rites and ceremonies at Delhi. No child was born from the said wedlock. On account of temperamental differences and disputes between Petitioner No.1 and Respondent No. 2, they parted ways and subsequently complaints were filed by Respondent No.2 against the Petitioners, which culminated into the present FIRs, which are the subject matter of these two petitions.

6. During the pendency of the criminal proceedings, parties have amicably resolved their disputes and differences with the intervention of well-wishers and relatives and there is no surviving dispute between them. Settlement Agreement was executed on 18.11.2023 incorporating the terms of settlement, whereby it was agreed that the parties would henceforth live together peacefully. Copies of the Settlement Agreement have been filed along with both the petitions.

7. Issue notice.

8. Learned ASC accepts notice on behalf of the State.

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9. Respondent No.2 is present in person and accepts notice.

10. Petitioners and Respondent No.2 are identified by the Investigating Officers ASI Raghuraj Singh, P.S. Sangam Vihar and SI Gaurav, P.S. Saket. Respondent No.2 states that she has entered into an amicable settlement out of her own free will and without any pressure or coercion and since she is now living happily and peacefully with Petitioner No.1, the FIRs be quashed to put a quietus to the litigation and maintain peace and cordial relationships between the parties. Learned ASC appearing on behalf of the State also has no objection to quashing of the present FIRs in view of the settlement between the parties.

11. The Supreme Court in *Gian Singh v. State of Punjab and Another*, (2012) 10 SCC 303, observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal

proceedings despite the compromise and if the answer to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of mental depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the victim's family settles the disputes with the offender. Relevant paragraphs of the judgment are as follows:-

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/01/2024 at 22:41:39 the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

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58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or

such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

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61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

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12. The Supreme Court has consistently reaffirmed this view and in the context of matrimonial disputes, it would be relevant to refer to the observations of the Supreme Court in *Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and Another*, (2013) 4 SCC 58, relevant paragraphs of which are as follows:-

"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. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an

abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders."

13. In *Ramgopal and Another v. State of Madhya Pradesh*, 2021 SCC OnLine SC 834, the Supreme Court held as follows:-

"11. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to This is a digitally signed order.

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12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck

post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 and *Laxmi Narayan* (Supra).

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14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

14. The Supreme Court in *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675, has observed that there is no doubt that the object of introducing Chapter XX-A containing Section 498A in IPC was to prevent torture to a woman by her husband and/or his relatives and is penal in nature, however, a hyper-technical view would be counter-productive and would act against interests of women in certain cases and would be against the object for which the provision was added as in a given case 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 peacefully early in their lives. This is not the object of Chapter XX-A of IPC and therefore, the High Court, in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 Cr.P.C. does not limit or affect the powers under Section 482 Cr.P.C.

15. In view of the settlement arrived at between the parties, pursuant to which Petitioner No.1 and Respondent No.2 are cohabiting as husband and wife and living happily and peacefully, this Court is of the view that it would be in the interest of justice to terminate the criminal proceeding. In view of the stand of Respondent No.2 that she does not wish to pursue the complaints, chances of conviction are bleak and remote and continuing the This is a digitally signed order.

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16. Petitions stand disposed of.

JANUARY 05, 2024/kks

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