

Sri. Najmul Hasan And Others vs State Of U.P. Thru. Prin. Secy. Home And ... on 9 May, 2018

Equivalent citations: AIRONLINE 2018 ALL 2903

Bench: Devendra Kumar Upadhyaya, Rajnish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No. - 9

AFR

Case :- MISC. BENCH No. - 5727 of 2018

Petitioner :- Sri. Najmul Hasan And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home And Others

Counsel for Petitioner :- Ruved Kamal Kidwai, Mohd. Murtaza Hasan

Counsel for Respondent :- Govt. Advocate, Shamim Jahan (Amicus)

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Rajnish Kumar, J.

(Delivered by Hon'ble Rajnish Kumar, J.)

1. The instant writ petition has been filed by the petitioners challenging the First Information Report dated 14.09.2017, vide Case Crime No.0404 of 2017, under Sections 498-A, 323, 377, 506 of Indian Penal Code 1860 and Section 3/4 of Dowry Prohibition Act, 1961 at Police Station Saadatganj, District Lucknow, lodged by Smt. Anjum Rizvi - opposite party No.3.

2. The petitioner No.1 Sri Najmul Hasan is the father-in-law of respondent No.3 (Smt. Anjum Rizvi), petitioner No.2-Sri Zeeshan Haider is the husband of respondent No.3 and the petitioner No.3 Shri Guddu is the Devar of opposite party No.3.

3. The marriage between the petitioner No.2 and the opposite party No.3 was solemnized on 10.05.2016 according to Muslim rituals. It appears that there was some marital discord and bickering soon after the marriage was solemnized. As a consequence thereof the impugned First Information Report was lodged by the opposite party No.3 against the petitioners.

4. This Court with the consent of the parties i.e. the petitioner No.2 and the opposite party No.3, who are husband and wife and were present before the Court, referred the matter to the Mediation and Conciliation Center of this Court vide order dated 08.03.2018. By the said order Ms.Shamim Jahan was also appointed as Amicus to assist the Court on behalf of respondent No.3.

5. It seems that with the sincere efforts of the mediator, the parties have settled their dispute in the Mediation and Conciliation Center and with the consensus of the parties a settlement agreement has also been signed by the petitioner No.2, the opposite party No.3, their counsels and the mediator.

6. A report of mediator with settlement agreement was received on 08.05.2018. The terms of settlement arrived at between the parties as set out in the settlement agreement are extracted hereinafter:-

"WHEREAS

1. Disputes and differences had arisen between the Parties here to and Criminal Misc. Writ Petition No.5727 of 2018 (MB) Sri Najmul Hasan & others Vs. State of U.P. & others, was filed in Lucknow Bench of Hon'ble High Court.

2. The matter was referred to mediation/conciliation vide an order dated 08.03.2018 passed by Hon'ble Mr.Justice Devendra Kumar Upadhyay & Hon'ble Mr.Justice Dinesh Kumar Singh.

3. The parties agreed that Mr.R.K.Verma, Advocate, High Court, Lucknow would act as their Mediator / Conciliator.

4. Several meetings were held during the process of Conciliation/Mediation and the parties have with the assistance of the Mediator/Conciliator voluntarily arrived at an amicable solution resolving the above mentioned disputes and differences.

5. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediator/Conciliator.

6. The following settlement has been arrived at between the parties hereto:-

A. That the first party, Husband Sri Zeeshan Haider and second party, Wife Smt. Anjum Rizvi have agreed to live together happily in future and husband will not harass/torture the wife.

B. That First party, husband will look after the wife and provide her clothings etc. as per her needs.

C. That the husband will maintain their daughter Baby Fariha (13 months) and make efforts to get her educated.

D. That both the parties will withdraw the pending cases against each other which are as under-

1. Case Crime No.0404/2017, 154 Cr.P.C. u/s 498-A, 323, 506, 377 and 3/4 D.P.Act filed in the Police Station-Saadatganj, district-Lucknow.

In addition to above mentioned case all other cases shall be withdrawn by either of the parties.

7. By signing this Agreement the Parties hereto state that they have no further claims or demands against each other with respect to Criminal Misc. Writ Petition No.5727 of 2018 (MB) and all disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Mediation/Conciliation.

Lucknow.RY/-

Dated:07.05.2018"

7. Heard learned counsel for the parties and perused the records.

8. The petitioner No.2- Shri Jeeshan Haider and the opposite party No.3 Smt. Anjum Rizvi, the husband and wife were present before this Court on 08.05.2018 and they had categorically admitted the terms and conditions arrived at and set out in the settlement agreement as reproduced here-in-above. The opposite party No.3 categorically stated that she does not want to pursue the proceedings of First Information Report dated 14.9.2017, vide Case Crime No.0404 of 2017, under Sections 498-A, 323, 377, 506 of Indian Penal Code 1860 and Section 3/4 of Dowry Prohibition Act, 1961 at Police Station Saadatganj, District Lucknow impugned in the present writ petition, in view of the settlement arrived at between the parties. The opposite party No.3 further submitted that she is wholly satisfied with the settlement arrived at between the parties. She further submitted that the impugned First Information Report be quashed against the petitioners as no grievance of the opposite party No.3 is left unaddressed. She further stated that now she is living happily with his husband i.e. the petitioner No.2 and his family without any grudge and does not want any harassment to them.

9. At the outset, we would like to observe that the dispute germane to the impugned First Information Report is the family discord which is basically a social problem, rather than a legal one, which sometimes generates during harmonizing of views,

likes and dislikes of two individuals and their families after marriage as in Indian culture marriage is not supposed of two individuals, but of two families, so such discord and bickering cannot be ruled out. However, if they, on their own volition after settling their disputes, want to live together in harmony, the result of such discord and bickering should not be allowed to prejudice them at any stage, otherwise the result of such prosecution is also well known that it would result in acquittal inasmuch as the complainant herself is not going to support the prosecution case.

10. The Supreme court in the case of B. S. Joshi and others versus State of Haryana and another : (2003) 4 SCC 675 has held that in matrimonial matters it becomes duty of the Court to encourage genuine settlement of matrimonial disputes and considering the special feature of a case where the chances of an ultimate conviction are bleak and no useful purpose would be served by allowing a criminal prosecution to continue in the court and while taking into consideration the special facts should quash the proceedings. In para 14 of the said judgment the Supreme Court has opined as under:-

"14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent the 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 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 XX-A of Indian Penal Code".

11. The aforesaid judgment was followed in the case of Nikhil Merchant versus C.B.I. and another : (2008) 9 SCC 677 and Manoj Sharma versus State and others : (2008) 16 SCC 1. However, in Gian Singh versus Station of Punjab: (2010) 15 SCC 118. A two judge bench of the Supreme Court doubted the correctness of these decisions including one in B.S. Joshi's case (supra) and matter was referred to a three judges bench.

12. In view of the aforesaid reference, a three judge bench of the Supreme Court in the case of Gian Singh versus State of Punjab and another (2012) 10 SCC 303 considered the questions referred to it and reiterated the ratio of the judgment in B.S. Joshi's case (supra). The Supreme Court in the aforesaid judgment has held that the cases predominantly with civil flavour particularly offences arising out of commercial, financial, mercantile, civil, partnership or other like transactions or the offences arising out of matrimony particularly relating to dowry etc., or the family disputes, where the wrong is basically private or personal in nature and the parties have settled their dispute outside the Court, in these category of cases, the High Court should quash the criminal proceedings, if High Court is of the opinion that as a result of compromise between the parties, possibility of conviction is

remote or bleak. In para 61 of the aforesaid judgment the Supreme Court has held as under:-

"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 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 pre-dominantly civil flavour stand on 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 criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of 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."

13. The Supreme Court in the case of Narinder Singh and others versus State of Punjab and another: (2014) 6 SCC 466 while relying on the earlier judgment in Gian Singh's case (supra) has held that the High Court in exercise of its inherent power may quash the criminal proceedings even in those cases which are non compoundable but the parties have settled their disputes between themselves. The relevant para i.e. 29.1 to 29.7 of the aforesaid judgment is extracted hereinbelow:-

"29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2 When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3 Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.

29.4 On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. 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 proving 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/deleicate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the

guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

14. In view of above, we are of the considered opinion that no fruitful purpose would be served by allowing the prosecution, lodged by the impugned First Information Report, to continue, rather it may cause oppression and prejudice. Our this view is also fortified by paragraph 15(ix) of a recent judgment of Hon'ble Supreme Court reported in AIR 2017 SC 4843 :Parbhatbhai Ahir Vs. State of Gujarat and Others in which Hon'ble Supreme Court has laid down the broad principles in respect of quashing of the First Information Report. The paragraph 15 of the said judgment, on reproduction, reads as under:-

"15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

- (i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash Under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction Under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power Under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the

state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

15. This court also in its judgment in Writ Petition No.22241(M/B) of 2017: Vivek Vanswar and others versus State of U.P. and others after considering the judgments of B.S. Joshi(supra), Gian Singh (supra) and Narinder Singh (supra) in respect of quashing of the criminal proceedings initiated under Section 498-A I.P.C. and related provisions and where there is a compromise or the parties have settled their dispute outside the court, has opined that these proceedings should be quashed once the parties have settled their dispute outside the Court. Para 5 of the Vivek Vanswar's case(supra) reads as under:-

"5. The object of the criminal prosecution is to punish guilty for committing the offence. When the result of the prosecution is well known that it would result in acquittal inasmuch as the complainant herself would not support the prosecution case, it would not serve any purpose for allowing the prosecution to go on. When it is absolutely crystal clear that the continuance of the criminal proceedings would be an exercise in futility, the High Court should not hesitate to quash such proceedings if the complainant herself comes before the Court and says that the criminal proceedings initiated by her be quashed against the accused. It is also well known fact that there has been a phenomenal surge in cases under Section 498A I.P.C. but there have been only a very few convictions. This fact itself shows that prosecution under Section 498A I.P.C. is quite often used as a potent weapon to settle score or for oblique purposes. Keeping in view the aforesaid facts, the High Court should quash the criminal proceedings arising out of the matrimonial discord particularly when complainant herself comes before a court for quashing of the criminal proceedings initiated by her on the ground that the parties have settled their disputes outside the Court."

16. Considering the compromise arrived at between the parties on 07.05.2018, as extracted above in paragraph 5 and the categorical stand of the opposite party No.3 before this Court, we are of the considered opinion that no useful purpose would be served in continuation of criminal proceedings in pursuance of the impugned First Information Report lodged by opposite party No.3. Accordingly, it would be appropriate, in the facts and circumstances of the case, to quash the impugned First Information Report as continuation of the proceedings of the First Information Report would be a futile exercise.

17. We, therefore, allow the writ petition and quash the proceedings of the First Information Report dated 14.09.2017, vide Case Crime No.0404 of 2017, under Sections 498-A, 323, 377, 506 of Indian Penal Code and Section 3/4 of Dowry Prohibition Act, 1961 at Police Station Saadatganj, District Lucknow, lodged by Smt.Anjum Rizvi-the opposite party No.3.

18. The Amicus appointed by this Court, as observed above, shall be paid her fee as per Rules at the earliest.

19. No orders as to cost.

Order Date :- 09.05.2018 Banswar