Shubham Shukla And Ors. vs State Of U.P. Thru. Prin Secy Home And ... on 31 May, 2018

Bench: D.K. Upadhyaya, Rajnish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No.9 AFR

Case :- MISC. BENCH No. - 13050 of 2018

Petitioner :- Shubham Shukla And Ors.

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

Counsel for Petitioner :- Arun Kumar Tripathi

Counsel for Respondent :- Govt. Advocate,Santosh Kumar Pandey

Hon'ble D.K. Upadhyaya,J.

Hon'ble Rajnish Kumar,J.

(Delivered by Rajnish Kumar,J.)

1. The petitioners have approached this Court challenging the First Information Report dated 19.04.2018, lodged by the opposite party no.4 against the petitioners in Case Crime No. 0075/2018, under Sections 494,498-A,323,506,354(A),370 and 452 I.P.C., Police Station- Nawabganj, District-Pratapgarh. Further, a prayer has been made for issuing a direction to the opposite parties not to arrest the petitioners in pursuance of the impugned First Information Report dated 19.04.2018. The petitioners have further prayed for issuance of such other order or direction, which this Court may deem fit and proper under the circumstances of the case.

2. The petitioner no. 1 is said to be the husband of the complainant, petitioner no.2 is the father-in-law, petitioner no. 3 is the mother-in-law and petitioner no. 4 is the son of aunt(mausi) of petitioner no.2. The marriage between the petitioner no.1 and the complainant/opposite party no.4 is said to have been solemnized as per the Hindu customs and rites.

3. 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. It also appears that prior to marriage of the petitioner no.1 with the opposite party no.4, the petitioner no.1 had married with one Vibha Pandey on 23.02.2010 according to Hindu customs and rites. Later on they were unable to carry on their marital life with each other, therefore, they entered into a compromise through Talaknama with the consent of each other by giving Rs. 3 Lacs 50 Thousand to Vibha Pandey through cheque and cash and they decided to live separately. The agreement to the said effect was executed between them, a copy of which has been annexed as Annexure No. 3 to the writ petition. As per terms and conditions of the agreement, both the parties were free to re-marry. It seems that the said agreement was executed with the consent of the parties therein. The same was executed and notorised on 05.07.2014. Consequent to the said Talaknama, an agreement was also duly signed,executed and notorised between the father of the petitioner no.1-Muneshwar Shukla and Sri Rama Kant-father of the first wife of the petitioner no.1,Vibha Pandey, on 05.07.2014. It was mentioned in the said agreement that the petitioner no.1-Shubham Shukla and Vibha Pandey have got divorced from the said date on account of dispute and they are free to re-marry and as a permanent alimony Rs. 3,50,000/- was paid to Vibha Pandey. It was also mentioned in both the agreements that both the parties will not file any suit before competent court and in case if any such suit is filed that would not be admissible.

4. It appears that in view of the aforesaid Talaknama and some mis-conception, the petitioner no.1 remarried with the opposite party no.4. Subsequently the dispute arose between the parties resulting into the impugned First Information Report which has been challenged before this Court in the present writ petition.

5. Since it was a matrimonial dispute, this Court found it proper to summon the parties to make an attempt to get the matter between the parties resolved through the process of mediation. Accordingly, the parties were summoned by the order dated 08.05.2018 and 16.05.2018. On 16.05.2018, the petitioner no.1-Shubham Pandey and the opposite party no.4-Neha appeared before this Court alongwith their counsel. With the persuasion of the Court as also by the learned counsel representing the parties, the parties agreed to settle their dispute by deliberation and with the help of some amicus. The opposite party no.4-Neha had stated before the Court that on account of various factors, specially the atmosphere at her in-laws' house and also because of the fact that the petitioner no.1 before his marriage with respondent no.4, was already married and till date there is no judicial separation or divorce from his first wife, it is becoming difficult;rather impossible for her to stay with the petitioner no.1. She had further stated that in case articles given in gift in marriage to the petitioner no.1 and his family are returned to her, she will not pursue the impugned first information report any further and for full and final settlement between the parties, she is entitled for permanent alimony as well. Accordingly, the offer was apprised to the petitioner no.1. Sri Shishir Jain, practicing advocate of this Court was appointed as amicus to hold deliberations between the parties. The following order was passed on 16.05.2018:-

> "In deference to our order dated 08.05.2018, the petitioner no.1 and respondent no.4 are present before this Court.

Sri Santosh Kumar Pandey, Advocate has put in appearance on behalf of respondent no.4 by filing Vakalatnama, which is taken on record.

With persuasion of the Court as also by learned counsel representing the parties, it appears that the petitioner no.1 and respondent no.4 may arrive at some settlement. We feel that there appears strong possibility of some agreement between them.

When enquired, respondent no.4 has stated before the Court that on account of various factors, specially the atmosphere at her in-laws' house and also because of the fact that the petitioner no.1 before his marriage with respondent no.4, was already married and till date there is no judicial separation or divorce from his first wife, it is becoming difficult; rather impossible for her to stay with the petitioner no.1. She has stated before the Court that in case articles given in gift in marriage to the petitioner no.1 and his family are returned to her, she will not pursue the impugned FIR any further. It has also been stated that for full and final settlement between the parties, she is entitled to permanent alimony as well.The petitioner no.1 has been apprised of the offer given by the respondent no.4.

List this case on 21.05.2018 to enable the petitioner no.1 to consider the offer proposed by respondent no.4. The petitioner no.1 and respondent no.4 shall be present on the next date.

The matter shall be taken at 2.00 p.m. In the meantime, we think it appropriate to request Sri Shishir Jain, a practicing Advocate of this Court to hold deliberations with petitioner no.1 and also respondent no.4 so that prospect of arriving at settlement between the parties is facilitated. Sri Jain has readily agreed to extend his assistance in the matter.Accordingly, we appoint him as Amicus for assistance of the Court.

learned A.G.A will apprise Sri Shishir Jain of this order today itself.

We request Sri Shishir Jain to apprise the Court of the deliberations which might take place between the parties on the next date.

We also direct that the petitioner no.1 shall give a sum of Rs.4000/- to the respondent no.4 by the next date.

Interim order granted earlier shall continue to operate till the next date of listing.

When the case is next listed, names of Sri Santosh Kumar Pandey and Sri Shishir Jain shall be shown in the cause list as counsel for the respondent. "

6. Thereafter the parties appeared on 21.05.2018 and after hearing the parties and Sri Shishir Jain, the amicus, the following order was passed on 21.05.2018:-

"In deference to our earlier order dated 16.05.2018, petitioner no.1 and respondent no.4-Neha are present in Court.

Shri Shishir Jain appointed by the Court as Amicus to facilitate the settlement between the parties has stated that he held deliberations with the parties and has prepared a list of certain articles, which according to respondent no.4, are due to be given to her. He has also stated that, as per respondent no.4, there are certain articles, which are still lying at her matrimonial home in two boxes and one almirah. One of boxes is locked, however, the other is not locked. The almirah is also said to be locked. Apart from the articles said to be kept in the boxes and the almirah, there are other certain articles, such as, Sofa, Refrigerator, Dressing Table and other articles.

It has been stated by Shri Jain that the respondent no.4 may be permitted to pay a visit to the house of petitioner no.1 and she may also be permitted to open the boxes and almirah. However, he prays that the respondent no.4 may be provided some security while she pays the visit to the house of petitioner no.1.

Having regard to the fact that some resolution of the issues between the parties appears to be in sight, we hereby provide that the respondent no.4 shall visit the house of petitioner no.1 on 26.5.2018. She shall be allowed by the family members of petitioner no.1 to open two boxes and almirah and in respect of the articles found therein, an inventory shall be prepared in presence of the learned counsel representing the petitioners as also Shri Shishir Jain, learned Amicus appointed by the Court.

We also direct the Superintendent of Police, Pratapgarh to provide two security guards, who shall accompany the respondent no.4 from her residence to the residence of petitioner no.1. One of the security guards to be provided under this order by the Superintendent of Police, Pratapgarh shall be a lady Constable/Head Constable/Sub Inspector and the other will be an Armed Guard. We also permit the learned counsel for the petitioners to be present at the time when the respondent no.4 visits the house of petitioner no.1.

The visit of respondent no.4 in the house of petitioner no.1 shall be coordinated by Amicus, who shall contact the Superintendent of Police and accordingly arrange the visit.

We also direct the learned Additional Government Advocate to communicate this order to the Superintendent of Police, who shall be in touch with the learned counsel for the petitioners as also Shri Shishir Jain, learned Amicus.

Shri Jain will produce his report on the next date of listing.

List this case on 28.05.2018, on which date, the petitioner no.1 as also the respondent no.4 shall be present before the Court.

Let certified copy of this order be furnished today itself to Shri Shishir Jain and learned Additional Government Advocate by the office free of charge.

As directed earlier, a sum of Rs.4000/- has been paid by the petitioner no.1 to the respondent no.4 in Court.

Interim order, if any, granted earlier shall continue to operate till the next date of listing."

7. On 28.05.2008, a report was filed by Sri Shishir Jain-amicus appointed by this Court after visiting the residence of the petitioner. He also informed that on his interaction with the petitioner no.1 and opposite party no.4, he found that both the parties have agreed to get the issues settled between them and in that direction the articles have already been taken back by the respondent no.4 which are mentioned in the report filed on the said date. Further the petitioner no.1 is ready to pay a sum of Rs. 2,00,000/- to the respondent no.4 towards full and final settlement between the parties in relation to the issues which have arisen between them. The respondent no.4 had also accepted the aforesaid offer. Accordingly, the case was directed to be listed on 31.05.2018 with a direction to the petitioner no.1 to bring a demand draft of Rs. 2,00,000/-and the parties were directed to appear before the Court again on the date fixed.

8. The petitioner no.1 and opposite party no.4 are present alongwith their counsel. Sri Shishir Jain, Amicus appointed by this Court also appeared and filed a settlement agreement duly sworn in by the petitioner no.1-Shubham Shukla and opposite party no.4-Neha executed in presence of two witnesses and Sri Shishir Jain,Advocate/amicus. The terms of settlement arrived at between the parties are extracted hereinafter:

"1. That the marriage between the parties hereto being void, the parties will live separately and will not to keep any relation with each other in future.

2. That the First Party will return to the Second Party all the articles which were gifted by the father of the Second Party in her marriage with the First Party.

3. That the First Party will pay to the Second party a sum of Rs. 2,00,000/- only (Rs. Two Lacs only) towards one time full and final settlement of all her claims against the First Party in relation to all the issues which have arisen between them out of their marriage. The payment of Rs.2,00,000/- only (Rs. Two Lacs only) would be made by the First Party to the Second Party through demand draft issued in the name of 'Neha Tripathi' which was the maiden name of Second Party.

4. That the Second Party declares that she had received all her articles from First Party and the Second party had taken away all her belongings from the house of the

First Party on 26.05.2018 in the presence of Amicus.

5. That the Second Party declares that she had received from the First Party a demand draft bearing Number 000965, dated 29.05.2018, amounting to Rs. 2,00,000/- only (Rs. Two Lakhs only), drawn on Bank of Baroda, issued in favour of Neha Tripathi towards one time full and final settlement of all her claims against First Party in relation to all the issues which have arisen between them out of their marriage.

6. The Second Party declares that all her claims in regard to the disputes and differences between the First Party and Second Party in relation to their marriage stands settled and paid and the Second Party has no other claim against First Party in this regard.

7. That the Second Party declares that she will not pursue first information Report dated 19.04.2018 lodged by her against the First Party and his family members, registered as Case Crime No. 0075/2018, under Sections 494, 498-A,323,506, 354-A, 370 and 452 I.P.C., at Police Station-Nawabganj, District Pratapgarh.

8. That the parties hereto declare that they will not institute any criminal or civil proceedings against each other or against any of the relatives or family members of other party in future in relation to any issue arising out of their marriage or any matter incidental thereto. If any proceeding is pending in this regard, the parties will get the same disposed of in terms of this settlement agreement.

9. That parties hereto declare that they shall be bound by the terms and conditions of this settlement agreeement in its strict sense.

10. That by signing this agreement the parties hereto state that they have no further claims or disputes against each other with respect to their marriage and matter involved in writ petition number 13050 (M/B) of 2018, Shbham Shukla and others versus State of U.P. and others) and all the disputes and differences in this regard have been amicably settled by the parties hereto under this settlement agreement. "

The petitioner no.1 and opposite party no.4 who are present before this Court also categorically stated that they have settled their disputes and confirmed the aforesaid terms and conditions. It has also been categorically stated by the petitioner no.1 and opposite party no.4 that the marriage between them being void, the parties will live separately and will not keep any relation with each other in future. A demand draft of Rs. 2,00,0000/- vide demand draft no.00965 dated 29.05.2018 drawn on Bank of Baroda, Kalakankar in favour of Neha Tripathi was handed over to the opposite party no.4-Neha by the petitioner no.1 which has been received by her. The settlement agreement dated 31.05.2018 and a copy of the demand draft no. 00965 dated 29.05.2018 (supra) filed before this Court are taken on record.

9. Heard Sri Arun Kumar Tripathi,learned counsel for the petitioner, Additional Government Advocate, Sri Santosh Kumar Pandey, learned counsel for the opposite party no.4 and Sri Shishir Jain, Amicus.

10. The petitioner no.1 and the opposite party no.4-Neha, the husband and wife present before this Court, have categorically admitted the terms and conditions arrived and set out in the settlement agreement as reproduced hereinabove.

The opposite party no.4 categorically stated that she does not want to pursue the proceedings of the First Information report dated 19.04.2018, vide case crime No. 10075 of 2018, under Sections 494,498-A, 323, 506, 354(A), 370 and 452 I.P.C., Police Station Nawabganj, District Pratapgarh impugned in the present writ petition, in view of the settlement arrived at between the parties. The opposite party no. 4 further submitted that she is wholly satisfied with the settlement arrived at between the parties and has received a demand draft of Rs. 2 lacs and has also received the items given in the marriage to the petitioner no.1 and his family members. She further submitted that the impugned first information report be quashed against the petitioners, as no grievance of the opposite party no.4 is left unaddressed.

The opposite party no.4 has further stated that since the petitioner no. 1 had solemnized the marriage with her while his first wife is still alive and no separation or divorce is there, therefore, the marriage between the petitioner no. 1 and the opposite party no.4 is void therefore this Court may declare the same as such. The petitioner no.1 stated that in view of the aforesaid agreement between him and his first wife, he, under the misconception that his earlier marriage stood dissolved after execution of the Talaknama dated 05.07.2014 between the parties to his earlier marriage, had solemnized marriage with the opposite party no.4 on 24.11.2016. Subsequently, he came to know that his second marriage is void accordingly he also prayed that his marriage with the opposite party no.4 may be declared void.

11. We have considered the submission of the parties and perused the record.

12. 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 cullture marriage is not supposed to be of two individuals, but of two families, so such discord and bickering cannot be ruled out. In the present case there was one more reason that the petitioner no. 1 had married with the opposite party no.4 during subsistence of his earlier marriage, that too without disclosing the same. However, if they, on their own volition after settling their disputes, want to live separately, the result of such discord and bickering should not be allowed to continue 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.

13. 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".

14. 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.

15. 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-dominatingly 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."

16. 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/delecate 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."

17. 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:
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> (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.
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> (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."

18. 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 there dispute outside the Court. Para 5 of the Vivek Vanswar's case(surpa) 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."

19. Considering the settlement arrived at between the parties and in view of the settlement agreement dated 31.05.2018, the terms of which have been reproduced in paragraph 8 and the categorical stand of the opposite party no.4 made 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. 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.

20. So far the question of marriage between the petitioner no.1 and opposite party no.4 is concerned, Section 5 of the Hindu Marriage Act 1955(hereinafter referred to as the "Act of 1955") provides the conditions for a Hindu marriage. Section 5 of the Hindu Marriages Act of 1955 is extracted as under:

> Section 5:Conditions for a Hindu marriage;- A marriage may be solemnised between the two Hindus, if the following conditions are fulfilled, namely-
>
> (i) neither party has a spouse living at the time of the marriage;
>
> (ii) at the time of the marriage, neither party-
>
> (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
>
> (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of (twenty one years) and the bride, the age of (eighteen years) at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

Condition No.1 for the hindu marriage is that neither party has a spouse living at the time of the marriage. In section 11 of the Act of 1955 it has been provided that any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto (against the other party) be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv), and (v) of the Section 5. Section 11 of the Act 1955 is extracted as under:

"11. Void marriages- Any marriage solemnized after the commencement of Act shall be null and void and may, on a petition presented by either party thereto (against the other party) be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv), and (v) of the Section 5."

21. In the present case, the petitioner no. 1 had married with one Vibha Pandey on 23.02.2010 according to Hindu customs and rites, but later on they were unable to carry on their marital life with each other,therefore, they entered into a compromise through Talaknama with the consent of each other by giving Rs. 3 Lacs 50 Thousand Rupees to the Vibha Pandey and they decided to live separately. Such Talakhnama is not tenable in view of the provisions of the Act of 1955. In the Act of 1955, ground for separation and divorce have been provided under Section 13 and a procedure has also been provided. As per the Act of 1955, the marriage between two hindus can be dissolved only on the grounds provided therein and by the prescribed procedure by a competent court of law. It cannot be deemed to be dissolved merely by way of an agreement or talakhnama. In section 15 of the Act 1955 it has been provided that when the divorced person may marry again. Section 15 of the Act is reproduced as under:

"15. Divorced persons when may marry again- When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again."

Bare perusal of Section 15 confirms that a person can marry again only after dissolution of marriage by the decree of divorce failing which the marriage would be void.

22. The meaning of the word "void"as given in the dictionary is "of no legal force or effect."

23. In a Full Bench decision of this Court in the case of Nutan Kumar versus Iind Additional District Judge, Banda and others; AIR 1994, Allahabad 298, in paragraph 8 of the majority judgement, the Court has observed as under:

> "The appellation 'void' in relation to a juristic act, means without legal force, effect or consequence; not binding; invalid; null;worthless; cipher; useless; and ineffectual etc."

24. In the present case, neither any suit was filed for divorce nor any decree was passed by the competent court in accordance with the Act of 1955 so the marriage between the petitioner no. 1 and Vibha pandey could not have been said to be dissolved neither can it be said that there was any divorce between them. Consequently the marriage of the petitioner no.1 with opposite party no.4 is void and not a marriage in the eyes of law,even if it has been performed in accordance with the customary rites and ceremonies of either parties as provided under section 7 of the Act. Section 11 of the Act of 1955 clearly provides that any marriage solemnised after the commencement of Act shall be void if it contravenes the conditions specified in clauses (i), (iv) and (v) of Section 5. The marriage of the petitioner no.1 with opposite party no. 4 is clearly in contravention of clause (i) of Section 5 of the Act of 1955 having solemnised after commencement of the Act and consequently it is void by operation of law. Observations of Hon'ble Apex Court in the case of A.Subhash Babu versus State of Andhra Pradesh;(2011)7SCC 616 made in paragraph 24 are relevant,,which on reproduction reads as under:

> "Though Section 11 of the Hindu Marriage Act provides that any marriage solemnised, if it contravenes the conditions specified in clause (i) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast an obligation on either party to seek delcaration of nullity of marriage and it may be open to the parties even without recourse to the court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom second marriage is solemnised continues to be wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband."

25. In view of above and the provision made in Section 11 of the Act of 1955 in the case of marriage being void, the petition may be presented before the district court/ family court under the act for the purpose of precaution and/or record and the woman with whom the second marriage has been solemnized continues to be wife within the meaning of Section 494 I.P.C. In the case in hand, the opposite party no.4 has categorically stated before this Court that she does not want to prosecute the petitioners even for Section 494 I.P.C. and has also executed a settlement agreement to this effect, accordingly the marriage between the petitioner no.1 and opposite party no. 4 stands declared void

for all purposes.

26. We therefore allow the writ petition and quash the proceedings of the First Information Report dated 19.04.2018, lodged by the opposite party no.4 against the petitioners in Case Crime No. 0075/2018, under Sections 494,498-A, 323, 506, 354(A), 370 and 452 I.P.C., Police Station Nawabganj, District Pratapgarh and the marriage between the petitioner no.1 and opposite party no.4 stands void.

27. Before parting with the case, we would like to put on record our immense appreciation for Sri Shishir Jain, Advocate/amicus who put his sincere efforts on account of which the parties could arrive at an honorable amicable settlement. He also on his own expenditure visited the house of petitioner no.1. for the purpose of settlement but humbly denied to take any fees for the cause. Gesture shown by him is highly laudable.

28. No order as to costs.

(Rajnish Kumar, J.) (D.K. Upadhyaya, J.) Order Date:-31.05.2018/ Akanksha S.