

Allahabad High Court

Km. Madhurima Bhargava And Ors. vs State Of U.P. And Anr. on 11 August, 1998

Equivalent citations: 1999 CriLJ 685

Author: K Shahi

Bench: G Malaviya, K Shahi

JUDGMENT K.D. Shahi, J.

1. The question referred by the single Judge, Hon'ble S. K. Phaujdar, J. is :-

Whether in exercise of powers under Section 482 Cr. P.C., the Court could direct compounding the offences which are not made compoundable under Section 320 Cr. P.C. specially in case under Section 498A of the I.P.C.

2. It shall be proper to give some facts of the case before adverting to reply the question. Smt. Meena Bhargava was wedded to Aditya Bhargava on 6th of October, 1990, according to Hindu rite and rituals. On 26-6-1992, she lodged a report at police station Haldwani, district Nainital under Section 498A, I.P.C. and Section 3/4 Dowry Prohibition Act against her husband Aditya Bhargava, Nanads (husband's sister) Ku. Madhurima Bhargava and Kum. Kavita Bhargava, Jeth (elder brother of husband) Pradeep Bhargava, Jethani (elder brother's wife of husband) Smt. Krishna Bhargava, mother-in-law Smt. Subhashini and father-in-law Dr. P. D. Bhargava and o(1 that basis police filed criminal case No. 799 of 1994 pending before the Chief Judicial Magistrate, Nainital. These accused persons filed a petition under Section 482 Cr. P.C. which was registered as Criminal Misc. Application No. 2704 of 1.996. During the proceedings, both the parties arrived at a com -promise. There had been a mutual divorce and i)t view of the compromise the wife was not. willing to proceed with the case and as such they should be allowed to compound the case and the proceedings be dropped. Before the learned single Judge it was argued that the offence under Section 498A I.P.C. is not compoundable in view of the provisions under Section 320 Cr. P.C. The ruling reported in 1997 J.I.C. 190 (All) Rahul Agrawal v. State of U.P. was referred before him in which the Court: had allowed the application under Section 482 Cr.P.C". and. quashed the criminal proceedings between the parties because, the disputes between them were amicably settled. The Court was of the view that no useful purpose would be served in a long trial. Before the learned single judge the decision at the Patna High Court in the case of Jai Prakash Chauiasia v. State reported in 1994 J.I.C. 939 was also referred. This was case under Section 498A I.P.C., tin; wife, complainant was not willing to prosecute the case, the court accorded the permission to compound and directed the Magistrate to record the compromise.

3. The third case which was referred before the learned single-Judge was the Supreme Court decision in a case under Section 307 I.P.C. where the Supreme Court permitted' the compounding of the offence under Section 307 I.P.C. although it was not compoundable. Supreme Court directed the trial Judge to accord permission to compound the charges after being satisfied on the compromise. The Seamed single Judge differed item the finding of the Rahul Bhargava's case and formulated a question above and reffered the question to the Division Bench for re-ply.

4. At the very outset, it is proper to emphasise that Indian Penal Code defines substantive offences and has provided the punishment to be given if the offence is proved. Criminal Procedure Code is to provide procedure for the trial of the cases. The provision of the Code supplements and adds to the provisions of other Code. There is no conflict between the two. From time to time amendments have been made in both the Codes with the advance of the society and correspondingly birth of new set-up of crimes. Amendments have been made in the Indian Penal Code as well with new dimensions of crime, A new concept of cruelty. Section 498A was added in Indian Penal Code by the Criminal Law (Second Amendment.) Act No. 46 of 1983.

5. It is surprising that Criminal Procedure Code has also been amended from time to time but Section 320 Cr.P.C. never got any attention of either the Central or the State Government and neither of the legislatures considered whether the new Sections added in Indian Penal Code from time to time be made compoundable or should be made non compoundable. Although this is beyond our scope in this reference to suggest to make the offences in relation to marriage or married life compoundable, yet it would, not be out of place to mention that in every provision of law relating to marriage, it has been provided that the Court shall first try to reconcile to dispute between the parties i.e. husband and wife...parties to the marriage and if reconciliation is not possible then to proceed with the case. Reconciliation is nothing else but a compromise or compounding between the parties. The Family Court Act, in which all the family disputes are covered is specific example of this fact. This is with a view to maintain matrimonial home than to break it and in view of these facts, we can only suggest that an offence pertaining to marriages should be made compoundable.

6. Coming to the actual question of reference, under Section 320 Cr. P.C. offences punishable under Sections specified in the first two columns of the Table may be compounded by the persons mentioned in the third column of that Table. Under Section 320(2) Cr. P.C, the offences mentioned in the first two columns of the Table may be compounded by the persons mentioned in the third column of the Table with the permission of the court. Under Section 320(9) Cr.P.C, no offence shall be compounded excepts provided by the Section. We have, not to say the meaning of word 'shall' is mandatory and nobody can ignore it.

7. The learned Additional Government Advocate further referred the ruling reported in AIR 1973 SC 2418, Ram Pulan v. State of UP. in which it has been held that, an offence under Section 326 Cr. P.C. is not compoundable. The Supreme Court held that the fact of compromise between the accused and injured can be taken into account to determine quantum of sentence even if the offence is not compoundable. In other words, the Supreme Court did not hold that compromise is to be rejected outright, this notice has to be taken although for limited purposes. The learned Additional Government Advocate further referred to a ruling reported in 1968 Cr LJ 1342 (All), State of U.P. v. Chandra Pal Singh by a Division Bench of this Court (Lucknow Bench). In this ruling, it was held that composition of non compoundable offence should not be permitted. The Magistrate had acquitted the accused persons under Sections 147, 323 and 149 I.P.C. in view of the compromise. The High Court set aside the compromise in respect of Section 147 I.P.C. and remanded the case for fresh hearing. It is not known whether the witnesses appeared in the trial after the remand and the accused was convicted under Section 147 I.P.C. or not but apparently after the compromise the witnesses could not have supported the prosecution story and the case must have ended into

acquittal.

8. It may be against public policy to allow the compromise in a non compoundable case but if the parties are bent upon to compromise, nobody can force them to fight. We cannot give a judicial stamp to such compromises because this may encourage, accused persons who are of serious nature to terrorise and force witnesses to enter into compromise but cases are not unknown where in a number of serious cases between the parties, the informant turns hostile and the witnesses say that they had not seen the occurrence. The Court becomes helpless and indirectly the compromise is accepted and the accused persons get acquitted. The present state of affairs are such that nobody can help it, and if the parties enter into compromise even in non-compoundable cases and the Court rejects an application for compromise even then afterwards it is an exercise in futility. The accused gets acquitted although not in terms of compromise, but on merits.

This is why the Supreme Court and some of the High Courts appear to have thought it proper to respect the wishes of the parties and to allow the parties to compromise in matters of family dispute in non-compoundable offences. This is also primarily for the reason and it is always safer for the society that if parties want to live happily and peacefully, without no kind of ill will and enmity, they should be allowed to do so. This is also not the intention of law that no compromise should be allowed, let the parties fight and hurt each other. Some sacrifice can be made for ensuring peace and if the parties want to live peacefully fully the Court should not be a party to unnecessarily drag them into hostility.

9. In the ruling reported in AIR 1988 SC 709 *Madhavrao Jiwalal Rao Scindia v. Sambhajirao Chandojirao Angrs*, there was a case under Sections 406 and 467 read with Sections 34 and 120B of the Penal Code. In this ruling it has been held by the Supreme Court that a case of breach of trust was both a civil wrong as well as a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. In that case, a complaint was filed for offences punishable under Sections 406, 467 read with Sections 34 and 120B of the Penal Code. The property was a trust property and one of the trustees was member of the settlor's family. The criminal proceedings were quashed by High Court in respect of two persons but they were allowed to be continued against the rest. It was held that the case in question was one of that type where, if at all, the facts constituted a civil wrong and the ingredients of the criminal offences were wanting hence the criminal proceeding had to be quashed.

10. In view of a compromise between the parties, the chances of conviction in such cases are always very bleak and no useful purpose would be served by allowing the criminal proceeding to continue and the Court may take notice of this special feature and can also quash the proceeding although the case may not be compoundable.

11. In the ruling reported in AIR 1988 SC 2111, *Mahesh Chand v. State of Rajasthan*, there was an offence under Section 307 I.P.C., the accused was acquitted by the trial Court but was convicted by the High Court. The offence was not compoundable in law but the parties prayed before the Supreme Court to treat it as a special case and the Supreme Court accepted the prayer and permitted the parties to compromise. It was argued that this order was passed by Supreme Court in exercise of its

power under Article 142 of the Constitution of India, The powers of Supreme Court are wider than the powers of the High Court. The powers of Article 142 of the Constitution of India are not available to the High' Courts.

12. In the ruling reported in (1991) 1 D. & M. C. 389, Naresh Kumar v. State of Haryana, a single Judge of Punjab and Haryana High Court has held where the parties under Sections 406/198-A I.P.C. have compromised the case, it will be sheer wastage of public time if the formalities of the trial has to go through. The High Court of Haryana, therefore, quashed the First Information Report in exercise of its jurisdiction under Section 482 Cr. P.C. and allowed the parties to compound the case.

13. On principles we cannot agree that an offence not compoundable should be made com-poundable and the Court should record recognition to such a compromise but still if the parties have compromised and do not produce evidence in view of the compromise one has to agree that the trial of the case shall be sheer wastage of public time and an exercise in futility. In another ruling reported in (1993) 2 D. & M. C. 581 : 1993 Cri LJ 3162, Daggupati Jayalakshmi v. State, a Division Bench of the Andhra Pradesh High Court has held that under inherent power in matrimonial cases, divorce or reunion by mutual consent, if there is a compromise, the Court is competent, to permit the parties to compound a non-compoundable offence. In this ruling also the case was under Sections 498A, 323 and 494 I.P.C. In paragraphs 7 and 8 of this ruling, it has specifically been held :-

7. Section 498A of the Indian Penal Code comprising of an independent chapter was inserted by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983) with effect from 25th December, 1983. Traditionally, in any society, the woman is subjugated to the whims and caprices of the man especially in the relationship between husband and wife. Life for woman in the family of the husband is some time so miserable and intolerable that the drudgery is some time put to an end by suicide and yet a successful suicide was beyond the pale of municipal law. Short of physical cruelty, the mental cruelty making continued existence an intolerable drudgery was not punishable. If ultimately the wife commits suicide, the guilty escaped punishment for want of an adequate provision. Conscience of the modern society violently reacted to this lacuna in the law. Introduction of the Chapter XX-A' reflects the anxiety of the Parliament to extend protection to the weaker spouse. Section 498A, Penal Code and Section 113A, Evidence Act also include in their amplitude the past events of cruelty prior to the coming into force of these two sections. So the main allegation that can be made in a complaint filed by a wife relates to the past events. In the event of their re-uniting together after a compromise has been settled at the instance of well-wishers and elders and if the parties want to speak the same in the Court, it will be an embarrassing situation for them. When a particular offence is alleged to have been made against another party, and if it is compoundable, the parties are at liberty to compound the same with or without the permission of the Court, as the case may be, if it is a non-compoundable offence, it has to be presumed that, the Legislature has thought it fit that it is a serious case where it cannot be compounded. In such a situation the concerned Court has no power to compound the same as there is a specific bar. So, the general principle that can be enunciated is that in the case of a non-compoundable offence the Court has no power to permit the parties to compound the same.

8. Section 498A of the Indian Penal Code was introduced in the year 1983, after a long lapse of time. Indian Penal Code was introduced in the year 1860. In view of the agitation from different quarters regarding the husband or relatives of the husband of a woman subjecting her to cruelty, the parliament thought it fit to introduce this Chapter XX-A containing Section 498A of the Indian Penal Code and in view of the seriousness of the offence it was made non-compoundable. When once the Legislature thought it fit to make the offence under Section 498A introduced under Chapter XX-A as non-compoundable, we have to consider whether under Section 482 of the Code of Criminal Procedure the High Court has got inherent power to permit the parties to compound the offence under Section 498A I.P.C. It may be remembered that even under the Hindu Marriage Act where the parties made serious allegations of adultery, and cruelty etc., still the legislature thought it fit to introduce a clause to the effect that the Court before the commencement of the trial, has to make an attempt for reconciliation. Even when serious allegations are made against each other, the Court has to make a genuine effort for reconciliation. If that reconciliation ended in fruitful success of making the parties re-united, the concerned Judge would not proceed with the matter further. Similarly when serious allegations are made in a complaint which made the Court to take cognizance of the same, can we say whether the Court can continue the proceedings involving non-compoundable offence even after the parties (husband and wife) compromised the matter voluntarily and filed an application for permission to compound the offence? Certainly the Magistrate is not competent to permit the parties to compound a non-compoundable offence. Then what is the remedy that is available for the parties (husband and wife) to compound the offence of a non-compoundable nature? The only remedy available for the parties, as is contended by the learned counsel for the petitioners, is the inherent power vested under Section 482 of the Code of Criminal Procedure. In a given set of circumstances, to meet the ends of justice or to prevent abuse of the process of the law, the Court has got inherent power under Section 482 of the Criminal Procedure Code. When there is a clear section in the Criminal Procedure Code, viz. Section 320, making particular offence as non-compoundable whether the Court can exercise the inherent power under Section 482 and permit the parties to compound a non-compoundable offence. Let us examine the case law on the subject to arrive at a just decision on the controversy in issue.

14. In this Division Bench ruling of the Andhra Pradesh High Court, the ruling reported in (1992) 2 Cur Cri R 1375 (Raj), *Prakash v. State of Rajasthan* was referred in which it has been held that when both the parties are prepared to withdraw the entire litigation which has been filed by them against each other, the continuance of any proceedings may be an impediment in their happy married life and even otherwise when the parties are prepared to resolve their all differences, it will be an exercise in futility to allow any proceeding; to go on.

15. A ruling of the Delhi High Court was further referred which was the case of *Arvind Bhushan Ghugh v. Dr. Promila alias Ritu* reported in (1992) 3 Cur Cri R 2272, which too was in relation to a case under Sections 406/498A/34 I.P.C. The Delhi High Court observed :- After receiving this amount, respondent No. 1 wants to withdraw her complaint and does not want to wash her dirty linen in public-. The law is meant to do justice, and not to force the parties for a protracted litigation. The Court has inherent power to compound a non-compoundable offence, when the interest of justice so requires. In this case, since the complaint has arisen out of matrimonial differences which ultimately having been settled, I see no reason why they should continue with the

criminal cases after they have settled their differences. Accordingly, the learned Judge quashed the I.T.R. registered under Sections 406/498A/34 I.P.C. and all proceedings initiated on the basis of the said F.I.R. are ordered to be dropped.

16. Several other rulings of various High Courts were also referred and in all these rulings the finding was that although a compromise cannot be recorded but in its jurisdiction under Section 482 Cr.PC. the Court can quash such a proceeding which it finds to be useless and against the interest of the parties and to force the parties for a protracted litigation.

17. The same view has been reported in (1995) 1 D. M. C. 190 (Madh Pra), Mithilesh Sahu v. State of Madhya Pradesh, in which it has been held that in the interest of justice criminal proceedings should be concluded, under special circumstances, of the case although were held not to be compoundable.

From the discussion above, it is clear that although a case under Section 498A I.P.C. is not compoundable but in the special circumstances the Court has got ample jurisdiction to quash the proceedings in exercise of its powers under Article 226 of the Constitution of India.

18. Hence it is found that in the exercise of power under Section 482 Cr. P.C., the Court cannot direct compounding of an offence which are not compoundable under Section 320 Cr.P.C. including a case under Section 498A I.P.C. However, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can quash the proceedings to maintain the matrimonial home, to allow the parties to live in peace, to save the time of the Court, to avoid exercise in futility, to save the couple from public humiliation and to save them from washing their dirty linen in public and particularly when the parties will not co-operate with the Court in just and fair trial of the case and when the chances of conviction are absolutely bleak rather nil in view of the compromise.

19. We have not to discuss here the scope of Section 482 Cr. P.C. in detail but before the submission of charge sheet a petition under Section 482 Cr. P.C. may not be maintainable therefore, the effective remedy to quash the proceedings can be had under the provisions of Article 226 of the Constitution of India. The ratio of the decision of Madhav Rao Scindia's case AIR 1988 SC 709 (discussed supra) is clear on this point and in appropriate cases under Article 226 of the Constitution of India the proceedings can be quashed in case of compromise between the parties. We are also supported by the rulings reported in :

(1) AIR 1981 SC 736 Para 5, Smt. Sooraj Devi v. Pyare Lal (2) AIR 1962 SC 1208, Sankatha Singh v. State of U. P.

(3) AIR 1993 SC 1361 : (1993 AH LJ 691) Para 4, Dharma Pal v. Smt. Ramshree.

A bare reading of the above decisions shows that where compromise is not permissible under Section 320 Cr. P.C, permission of compromise cannot be accorded and the High Court Cannot direct compounding of an offence in exercise of its powers under Section 482 Cr. P.C.

20. In resultant our reply to the above question is :-

In exercise of powers under Section 482 Cr. P.C. the Court cannot direct compounding of offences which are not compoundable under Section 320 Cr. P.C. including a case under Section 498A I.P.C.