

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. M.C. No. 1643-50/2006

22.10.2007

Date of Decision: 22nd October, 2007

Mohd. Nasir and Ors.

.....Petitioners

Through Mr. G.M. Rana, Advocate for the petitioners

versus

\$ State of NCT of Delhi

Respondent

Through Mr. Pawan Behl, Advocate for the State.

Petitioner no. 1 and complainant in person.

CORAM:

HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the judgment?(No)

2. To be referred to the Reporter or not?(No)

3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ?Cr.P.C.?) for quashing of FIR No. 90/2001 under Sections 498-A/406/34 of Indian Penal Code (?I.P.C.? in short), registered at Police Station Chandni Mahal on 30.04.2001, as well as the trial going on in the court of Ms. Sarita Birbal, Metropolitan Magistrate, Delhi.

2.The relevant facts are that the marriage between petitioner no. 1 and petitioner no. 8 was solemnized as per Muslim custom on 10.06.1998. Petitioners no. 2 to 7 are family members of petitioner no. 1. After the marriage between the petitioner no. 1 and petitioner no. 8 disputes arose between petitioner no. 8 and her in-laws which led to the registration of an FIR under Sections 498-A/406/34 IPC at Chandni Mahal police station at the behest of petitioner no. 8. In her complaint to the police petitioner no. 8 had made allegations of torture to her by her in-laws for not fulfilling their demands of dowry. The police did the investigation and then filed a charge-sheet in the concerned Court against the petitioners where trial is stated to be going on.

3.During the pendency of the said criminal proceedings, the petitioners have resolved their disputes and arrived at an amicable settlement as regards the maintenance, dower, custody of child, dowry articles etc. The parties have also executed a compromise deed dated 28.08.2003 wherein the terms of settlement have been written down by the parties. Copy of the said agreement is annexed with this petition as Annexure ?A-2?.

4. Since the offences for which the petitioners were being prosecuted were not

compoundable as per the provisions of Section 320 Cr.P.C the present petition under Section 482 Cr.P.C. was filed by the petitioners. Notice of the petition was sent to the State and respondent no.2-complainant. Respondent no. 2 appeared in person along with a counsel on 01-10-2007 before this Court and she affirmed that the disputes have been amicably resolved and so she was no more interested in pursuing her case against any of the petitioners. She has also filed an affidavit to that effect and also to the effect that divorce has also taken

place. She supported the prayer of the petitioners for quashing of the FIR. She also affirmed the terms of settlement which have been written in black and white in the agreement dated 28.08.2003. Learned APP for the State did not say anything in opposition to the petition in view of the settlement between the complainant(petitioner no. 8) and her in-laws(petitioners no. 1-7).

5.In support of the prayer made in the petition for quashing of the FIR, learned counsel for the petitioners placed reliance upon a judgment of the Hon?ble Supreme Court in ?B.S.Joshi and Ors. Vs. State of Haryana and Anr.?, AIR 2003 SC 1386. That was also a case under Sections 498-A/323/406 IPC and during the pendency of criminal proceedings the disputes between the parties were settled. Petition was filed in the High Court for quashing of the FIR but that petition was dismissed by the High Court on the ground that the offences under Sections 498-A and 406 IPC being non-compoundable the inherent powers under Section 482 Cr.P.C. could not be invoked to bypass the mandatory provisions of Section 320 Cr.P.C. While reversing the decision of the High Court the Hon?ble Supreme Court observed that ?if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing.? It was also observed that in case of matrimonial disputes it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes. In paras no. 13 and 14 of the judgment it was observed as under:-

?13. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad and Ors. are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reason which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their ?young? days in chasing their ?cases? in different courts.

14. There is no doubt that the object of introducing Chapter XX-A containing

Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A 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 XXA of Indian Penal Code.?

After observing so, the Hon?ble Supreme Court quashed the FIR in view of the fact that the matrimonial dispute between the parties in that case had been amicably resolved.

7. The complainant in the present case, as noticed already, has herself admitted before this Court that because of the settlement of the disputes with her co-petitioners she is no more interested in the prosecution of any one of them pursuant to the FIR got registered by her. Thus, in view of the afore-quoted views of the Hon?ble Supreme Court in B.S. Joshi?s case (supra) the FIR registered at the instance of petitioner no. 8-complainant against the

petitioners no. 1 to 7 deserves to be quashed since the parties have amicably resolved their disputes.

8. This petition is accordingly allowed and consequently FIR No. 90/2001 dated 30.04.2001 registered at Police Station Chandni Mahal under sections 498-A/406/34 IPC and the criminal case pending in the court of Ms. Sarita Birbal, Metropolitan Magistrate, Delhi are hereby quashed.

**October 22, 2007 P.K.BHASIN,J
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