

Gulshan Kumar Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 25, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 320(9), 482
Penal Code, 1860 (IPC) â€” Section 323, 34, 498-A, 506

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Advocate: Viney Saini, Advocate for the Appellant; Pradeep Virk, D.A.G. and Ankit Aggarwal, Advocate for the Respondent

Final Decision: Allowed

Judgement

Daya Chaudhary, J.

Petitioners, namely Gulshan Kumar, Kundal Lal, Tarun Kumar and Tamanna are accused in case FIR No. 64 dated

14.02.2011 registered under Sections 498-A/506/323 read with Section 34 IPC at Police Station Ambala City.

2. Petitioner no. 1 is husband, petitioner No. 2 is father-in-law, petitioner No. 3 is brother-in-law (jeth) and petitioner No. 4 is sister-in-law

(jethani) of the complainant-respondent No. 2. The marriage between petitioner No. 1 and respondent No. 2 was solemnized on 25.11.2000.

However, out of the said wedlock, two children were born but subsequently, due to temperamental differences, both the parties could not live

together and started living separately since 14.02.2011. Complainant-respondent No. 2 made a complaint, on the basis of which, an FIR, in

dispute was registered against the present petitioners.

3. During pendency of the proceedings, the parties settled their dispute with the intervention of relatives. It was settled between the parties that the

petitioner No. 1 and respondent No. 2 would obtain decree of divorce on the basis of mutual consent and the petitioner No. 1 will pay a sum of

Rs. 7,50,000/- as permanent alimony and both the children will remain with complainant-respondent No. 2.

4. The petitioners have approached this Court by way of filing the present petition for quashing of FIR, in dispute, on the basis of compromise.

5. While issuing notice of motion on 11.03.2014, the directions were also issued to the parties to appear before the trial Court for recording of

their respective statements with regard to compromise and the trial Court was also directed to send its report along with statements of the parties.

6. However, in compliance of said directions of this Court, the statements of all the parties were recorded before the trial Court, wherein, the

factum of compromise was affirmed. The complainant-respondent No. 2-wife has also specifically stated in her statement that she has no objection

in quashing of FIR registered against the petitioners. As per report sent by the trial Court, the compromise is genuine and the statements made by

the parties are as per their own free will. The copy of compromise with certain terms and conditions has also been placed on record, which has

duly been signed by petitioner No. 1-husband and complainant/respondent No. 2-wife.

7. Since the dispute between the parties has been settled by way of compromise and the complainant has no objection in quashing of the

proceedings and moreover, no purpose would be served, in case, the proceedings are allowed to be continued as ultimate result would be

acquittal as the complainant is not going to support the case of the prosecution because of compromise, the continuation of the proceedings would

be an exercise in futility which will not only amount to wastage of valuable time of the Court but it would not be in the interest of both the parties

also. The continuation of the proceedings would be abuse of process of Court and the same would not be in the interest of justice. This Court has

power to quash the proceedings on the basis of compromise. Powers u/s 482 Cr.P.C. have been designed to achieve that the proceedings may

not be permitted to degenerate into a weapon of harassment or prosecution as has been held by Hon"ble the Apex Court in case State of

Karnataka Vs. L. Muniswamy and Others,

8. It has been observed by Hon"ble the Apex Court that though justice has to be administered according to the laws made by the legislature yet

the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution. The relevant observations of made

therein are reproduced as under:-

In the exercise of this wholesome power, the High Court is entitled to quash the proceeding if it comes to the conclusion that allowing the

proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve that a court proceeding ought not to be

permitted to degenerate into a weapon of harassment or prosecution. In a criminal case, the veiled object behind a lame prosecution, the very

nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the

interest of justice. The ends of justice are higher than the ends of mere law though justice has not to be administered according to the laws made by

the legislature. The compelling necessity for making these observations is that without a proper realization of which seeks to save the inherent

powers of the High Court to do so justice between the State and its subjects it would be impossible to appreciate the width the contours of that

salient jurisdiction.

9. A larger Bench of this Court in *Kulwinder Singh and Others Vs. State of Punjab and Another*, has also observed that the proceedings can be

quashed even in case of non-compoundable offences, in case, the compromise is there between the parties. The observations of this Court are

reproduced as under:-

Criminal Procedure Code, Section 320(9)-Criminal Procedure Code, Section 482-Compounding of offences which are non-compoundable u/s

320(9) Cr.P.C.-Offence non-compoundable, but parties entering into compromise-High Court has power u/s 482 Cr.P.C. allow the compounding

of non-compoundable offence and quash the prosecution where the High Court felt that the same was required to prevent the abuse of the process

of any court or to otherwise secure the ends of justice-This power of quashing is not confined to matrimonial disputes alone.....

10. In the present case, the dispute between the parties is matrimonial and the same is not against the Society. On the basis of compromise, the

marriage between the parties has also been dissolved. In case of matrimonial dispute, because of strained relations, multiple litigation is there

between the parties. Sometimes not only the strained relations are there between husband and wife but other family members and also the distant

relations are implicated. Sometimes tendency of false implication is also there because of the strained relations. Even after acquittal by the Courts,

some impressions are there on the parties which not only affect their future prospects but the bitterness becomes a part of life.

11. Hon"ble the Apex Court has observed in judgment *Preeti Gupta and Another Vs. State of Jharkhand and Another*, as under:-

30. It is a matter of common experience that most of these complaints u/s 498-A IPC are filed in the heat of the moment over trivial issues without

proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the

same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or

demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the

complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must

maintain its noble traditions and should treat every complaint u/s 498-A as a basic human problem and must make serious endeavour to help the

parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social

fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple

cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such

complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in

majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the

conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these

complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's

close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an

entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals

that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of

common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it

would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious re-look of the entire provision is warranted by the legislation. It is also a

matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over

implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep

scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous

social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic

realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and

the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this

judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon"ble Minister for Law &

Justice to take appropriate steps in the larger interest of the society.

12. In view of the above, the present petition is allowed and FIR No. 64 dated 14.02.2011 registered under Sections 498-A/506/323 read with

Section 34 IPC at Police Station Ambala City along with all subsequent proceedings arising therefrom, are quashed qua petitioners-Gulshan

Kumar, Kundan Lal, Tarun Kumar and Tamanna.