
(2008) 03 JH CK 0084
Jharkhand High Court
Case No: None

Mirisch Damani

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: March 18, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 320, 482
- Penal Code, 1860 (IPC) - Section 406, 420, 493, 495, 498A

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceedings of complaint case bearing P.C.R. No. 288 of 2003 filed in the court of Chief Judicial Magistrate, Deoghar but subsequently transferred to the court of Chief Judicial Magistrate, Ranchi under the order of the Hon'ble Supreme Court and has been re-numbered as C-1140 of 2004 and also for quashing of the order dated 27.9.2003 whereby and whereunder cognizance of the offences under Sections 493/420/495/406 of the Indian Penal Code has been taken against the petitioner.

2. When the matter was heard on the point of admission, notice was issued to opposite party No. 2. On her appearance, when it was communicated to the court that there is every likelihood of matrimonial dispute being settled, the matter was referred before the conciliator so that the conciliator may take effort for bringing amicable settlement in between the parties and there they were able to settle their disputes by coming to certain terms which were reduced in writing and was filed before the conciliator and the said document has also been brought on the record

by filing supplementary affidavit wherein it has been stated that the petitioner has agreed to pay a sum of Rs. 38,00,000/- through demand drafts to opposite party No. 2 towards full and final settlement subject to condition that all the cases pending in the court of Nasik and also at Ranchi shall be withdrawn and thereby the opposite party No. 2 will not claim any right, title or interest over the properties or the estate of the petitioner and that personal belongings of opposite party No. 2 lying In the house of the petitioner at Nasik would be handed over to her or her representative by the petitioner.

3. It be recorded that yesterday, i.e., on 17.3.2008 four drafts each worth Rs. 9.5 lacs drawn in favour of opposite party No. 2, in total Rs. 38 lacs, were handed over to opposite party No. 2 in the Court itself and it was agreed upon that on 30.4.2008 personal belongings of opposite party No. 2 lying in the house of petitioner at nasik would be returned either to opposite party No. 2 or her representative and the case was posted for today, i.e., 18.3.2008 on the request of learned Counsel appearing for the parties for its final disposal.

4. Learned Counsel appearing for the petitioner submits that though the instant case has not arisen out of a complaint instituted for an offence u/s 498A of the Indian Penal Code but dispute is as such that it assumes characteristics of matrimonial dispute and therefore, it would be desirable that entire criminal proceeding be quashed keeping in view the ratio laid down in a case of [B.S. Joshi and Others Vs. State of Haryana and Another](#), as the parties have settled their disputes amicably.

5. Before proceeding further in the matter, it would be worth while to take notice of the case of the complainant as has been made out in the complaint which is as follows:

6. The complainant (opposite party No. 2) had married one Gaurt Shankar Rungta In the year 1968 and In course of time they had had one daughter, namely, Rajshri Rajgarhia but in the year 1971 the said Gauri Shankar Rungta died in a car accident. Further case is that in the year 1997 the complainant came in contact with the petitioner through matrimonial advertisement whereby he had offered to marry suitable match and accordingly, she married petitioner in the year 1997 at Deoghar and started living as wife and husband but the petitioner started subjecting her to cruelty and after some times she could know that the petitioner's marriage with one Purnima Damani is still subsisting though their marriage got dissolved by the family court, Mumbai in January, 2003 but the petitioner at the time of marriage had not disclosed about that fact and then in the year 2003, she was thrown out of the house by the petitioner by taking plea that she is not his legally wedded wife.

7. When the cognizance of the offences was taken, the petitioner did file this application whereby entire criminal proceeding including the order taking cognizance was sought to be quashed on various grounds and when parties settled

their disputes quashment of the entire proceeding is being sought on the ground that disputes now have been settled between the parties.

8. Having heard learned Counsel appearing for the parties and on perusal of the record it does appear that on the allegation made in the complaint cognizance of the offences has been taken u/s 493/420/495/406 of the Indian Penal Code and not u/s 498A of the Indian Penal Code which is generally termed as matrimonial dispute and in such case if the parties got their dispute settled and do come to the court for quashing of the proceeding the High Court in exercise of the power u/s 482 of the Code of Criminal Procedure generally quashes the proceeding keeping in view the ratio laid down in B.S. Joshi's case. That apart, one can seek quashing of the first information report, complaint or the proceeding of the case other than the case relating to matrimonial dispute If it falls within any of the seven categories as laid in [R.S. Raghunath Vs. State of Karnataka and another](#), but on reading of entire Judgment and particularly paragraph 102 one would come to the conclusion that the said categories of the cases were given by way of illustration. The said paragraph 102 reads as follows:

102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of the law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of case by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

9. Subsequently in a case of [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), the Hon'ble Supreme Court again with reference to Bhajan Lal case observed that the guidelines laid therein as to where the court will exercise jurisdiction u/s 482 of the Code could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits.

10. Again In a case of [Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others](#), it has been held by the Hon'ble Supreme Court that while exercising inherent power of quashing u/s 482 of the Code of Criminal Procedure, it is for the High Court to take Into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of court, chances of an ultimate conviction are bleak and, therefore, no useful purpose

is likely to be served by allowing a criminal prosecution to continue; the court may, while taking into consideration the special fact of the case, also quash the proceedings.

11. Subsequently, in a case of [B.S. Joshi and Others Vs. State of Haryana and Another](#), the question fell for consideration before the Hon'ble Supreme Court that when matrimonial dispute particularly where allegation for an offence u/s 498A or u/s 406 of the Indian penal Code is levelled are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also for mutual settlement of other pending dispute as a result whereof both sides approach the High Court and jointly prayed for quashing of the criminal proceeding or the first information report or the complaint filed by wife u/s 498A and 406 of the Indian Penal Code, can the prayer be declined on the ground that since the offence are non-compoundable u/s 320 of the Code, therefore, it is not permissible for the court to quash the criminal proceedings or first Information report of the complaint. The court having taken into consideration several decisions dealing with the scope of Section 482 of the Code, answered in negative on the reasoning that after the parties settled their dispute there may be valid reason for the complainant for not supporting the imputations at the wife on account of dispute being resolved either she has again started living with her husband with whom she had earlier differences or she has willingly parted company and Is living happily on her own or has married someone else and In such eventuality, there would almost be no chance of conviction. Thus, His Lordship did hold that the High Court in exercise of its inherent power can quash criminal proceedings or first information report or the complaint as Section 320 of the Code does not limit or affect the power u/s 482 of the Code.

12. After taking notice of the ratio laid down by the Hon'ble Supreme Court in the cases, referred to above, one can come to the conclusion easily that exercise of power u/s 482 of the Code of Criminal Procedure cannot be limited to matrimonial cases and cases falling within the seven categories as laid down in Bhajan Lal's case rather the High Court has ample power to quash criminal proceeding even in non-compoundable offence notwithstanding the bar of Section 320 of the Code of Criminal Procedure in order to do complete justice which is the essence of every justice dispensing system.

13. Coming to the facts of the case, as has been noticed above, the parties have resolved their dispute by agreeing to part with their ways and in that view of the matter, there would be abuse of the process of law if the parties are allowed to face the rigor of the trial.

14. In that view of the matter, the entire criminal proceeding of complaint case earlier bearing P.C.R. No. 288 of 2003 renumbered as C-1140 of 2004 pending in the court of Chief Judicial Magistrate, Ranchi including the order dated 27.9.2003 taking cognizance of the offences under Sections 493/420/495/406 of the Indian Penal Code against the petitioner is hereby quashed.

15. In the result, this application is allowed.