

Asha Devi & Ors Vs State Of Himachal Pradesh & Anr

Court: High Court of Himachal Pradesh

Date of Decision: April 24, 2019

Acts Referred: Code Of Criminal Procedure, 1973 â€” Section 164, 320, 482

Indian Penal Code, 1860 â€” Section 376, 406, 498A,

Protection Of Children from Sexual Offences Act, 2012 â€” Section 6

Constitution Of India, 1950 â€” Article 142, 226

Hon'ble Judges: Chander Bhusan Barowalia, J

Bench: Single Bench

Advocate: K.B. Khajuria, S.C. Sharma, Shiv Pal Manhans, P.K. Bhatti, Raju Ram Rahi, M.L. Sharma

Final Decision: Allowed

Judgement

Chander Bhusan Barowalia, J

1. The present petition is maintained by the petitioners under Section 482 of the Code of Criminal Procedure (hereinafter to be called as "the

Code"â€”) for quashing of F.I.R No. 12/2018, dated 26.1.2018, under Section 376 of the Indian Penal Code and Section 6 of Protection of Children from

Sexual Offences Act, 2012, registered at Police Station, Dalhousie, District Chamba, H.P.

2. Briefly stating the facts, giving rise to the present petition, as per the prosecution story, on 26.01.2018, the prosecutrix (name withheld) got her

statement recorded with the police, wherein she stated that she is 16 years of age and studies in 11th standard. She further stated that respondent

No.2-accused on the pretext of marriage committed sexual intercourse with her many times. As per the prosecutrix, in the month of March, 2018, she

came to know that respondent No.2-accused does not want to marry her. She came to know that she is pregnant and respondent No.2-accused on the

pretext of marriage committed sexual intercourse with her. On the basis of the complaint, so made by the prosecutrix, police registered a case and the

investigation ensued. The statement of the prosecutrix was recorded under Section 164 Cr. P.C. As per the final medical opinion, there is single live

intrauterine pregnancy of 25 weeks, 03 days, i.e., HR 138 beats/min EDD on 27.05.2018 and there is no gross congenital anomaly seen. Thereafter,

complainant-petitioner No.2 reported the matter to the police and FIR was lodged. Now, the parties have entered into a compromise and are married

having a child with whom they are living happily. Prosecutrix is not supporting the prosecution case and as family is happy family compromised the

matter and prosecutrix do not want to pursue the case against respondent No.2. Hence, the present petition.

3. Learned counsel for the petitioners has argued that as the parties have compromised the matter, no purpose will be served by keeping the

proceedings against the petitioners and the FIR/Challan, may be quashed and set aside.

4. On the other hand, learned Additional Advocate General has argued that the offence is not compoundable, so the petition may be dismissed.

5. Mr. M.L. Sharma, learned counsel appearing on behalf of respondent No.2, has argued that the parties have entered into compromise and so, the

proceedings pending before the learned Court below may be quashed.

6. To appreciate the arguments of learned counsel appearing on behalf of the parties, I have gone through the entire record in detail.

7. Their Lordships of the Hon'ble Supreme Court B.S. Joshi and others vs. State of Haryana and another, (2003) 4 SCC 675, have held 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 is well settled that the powers under section 482 have no limits. Of course, where there is more power, it becomes necessary to exercise utmost

care and caution while invoking such powers. Their Lordships have held as under:

[6] In Pepsi Food Ltd. and another v. Special Judicial Magistrate and others ((1998) 5 SCC 749), this Court with reference to Bhajan Lal's case

observed that the guidelines laid therein as to where the Court will exercise jurisdiction under Section 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. Of

course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.

[8] It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or

complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view

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 is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

[15] In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or

complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

8. Their Lordships of the Hon'ble Supreme Court in Preeti Gupta and another vs. State of Jharkhand and another, (2010) 7 SCC 667, have held

that the ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. The tendency of implicating the husband and all

his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth.

Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. The criminal

trials lead to immense sufferings for all concerned. Their Lordships have further held that permitting complainant to pursue complaint would be abuse

of process of law and the complaint against the appellants was quashed. Their Lordships have held as under:

[27] A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in Inder Mohan Goswami and Another v.

State of Uttaranchal & Others, 2007 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant

observations of the court are reproduced in para 24 of the said judgment as under:-

Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise

is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the

process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in

absence of specific provisions in the Statute.

[28] We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the

complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the

appellants.

[35] 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.

36. 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.

[38] 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.

9. Their Lordships of the Hon'ble Supreme Court in *Jitendra Raghuvanshi and others vs. Babita Raghuvanshi and another*, (2013) 4 SCC 58, have

held that criminal proceedings or FIR or complaint can be quashed under Section 482 Cr. P.C. in appropriate cases in order to meet ends of justice.

Even in non-compoundable offences pertaining to matrimonial disputes, if court is satisfied that parties have settled the disputes amicably and without

any pressure, then for purpose of securing ends of justice, FIR or complaint or subsequent criminal proceedings in respect of offences can be

quashed. Their Lordships have held as under:

[13] As stated earlier, it is not in dispute that after filing of a complaint in respect of the offences punishable under Sections 498A and 406 of IPC, the

parties, in the instant case, arrived at a mutual settlement and the complainant also has sworn an affidavit supporting the stand of the appellants. That

was the position before the trial Court as well as before the High Court in a petition filed under Section 482 of the Code. A perusal of the impugned

order of the High Court shows that because the mutual settlement arrived at between the parties relate to non-compoundable offence, the court

proceeded on a wrong premise that it cannot be compounded and dismissed the petition filed under Section 482. A perusal of the petition before the

High Court shows that the application filed by the appellants was not for compounding of non-compoundable offences but for the purpose of quashing

the criminal proceedings.

[14] The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In B.S. Joshi , this Court has upheld the powers

of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the

parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the

High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

[15] In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable

increase. Even if the offences are non- compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the

same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the

exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

[16] There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an

important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in

life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in

a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It

is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis

of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that

the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case

and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the

duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of

the Constitution enables this Court to pass such orders.

[17] In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or

complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court

under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in

M.C.R.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I,

Indore.

10. Similarly, Hon'ble Supreme Court in Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another,

(2017) 9 Supreme Court Cases 641, wherein it has been held as under :

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

~ 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;

~ 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.

~ 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;

~ 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;

~ 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;

~ 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;

~ 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;

Ã, 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;

16.9 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

16.10. There is yet an exception to the principle set out in propositions 16.8 and 16.9 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.

Even if, the trial is allowed to be continued, as the parties have compromised the matter, there are bleak chances of conviction to secure the ends of

justice.

11. From the perusal of records, it is clear that the parties have solemnized their marriage out of their free will and volition and a Ã¢â¬Ïmarriage

certificateÃ¢â¬Ï evidencing such marriage has also been issued in their favour. When the parties have reached the settlement, then the guiding factor in

such cases would be to secure the ends of justice or to prevent the abuse of process of any Court. After-all, the Court ought not to interfere or even

intervene when petitioner No.2 and respondent No.2 are husband and wife in the eyes of law. This Court is convinced that the continuation of the

proceedings would tantamount to abuse of process of law and would play havoc with the married life of petitioner No.2 as also respondent No.2.

12. Thus, taking into consideration the law as discussed hereinabove, I find that the interest of justice will be met, in case, the proceedings are

quashed, as the parties have already compromised the matter

13. Accordingly, looking into all attending facts and circumstances, I find this case to be a fit case to exercise jurisdiction vested in this Court, under

Section 482 of the Code and accordingly F.I.R No.12/2018, dated 26.1.2018, under Section 376 of the Indian Penal Code and Section 6 of Protection

of Children from Sexual Offences Act, 2012, registered at Police Station, Dalhousie, District Chamba, H.P; is ordered to be quashed and

consequently, the proceedings pending before the learned Sessions Judge, Chamba, District Chamba, H.P; arising out of the aforesaid FIR, are also

ordered to be quashed.

14. The petition is accordingly disposed of alongwith pending applications, if any.