
(2017) CriLJ 1063 : (2016) 4 JKJ 334

Jammu & Kashmir High Court

Case No: 561-A No. 59 of 2013 and Cr. MA No. 74 of 2013

Kanta Choudhary

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision: April 16, 2016

Acts Referred:

- Jammu and Kashmir Criminal Procedure Code, 1989 - Section 561-A
- Jammu and Kashmir Hindu Marriage Act, 1980 - Section 13

Citation: (2017) CriLJ 1063 : (2016) 4 JKJ 334

Hon'ble Judges: Mr. Mohammad Yaqoob Mir, J.

Bench: Single Bench

Advocate: Mr. S.S. Nanda, Sr. AAG, for the Respondents; Mr. Sunil Sethi, Sr. Advocate with Mr. Dhiraj Chowdhary, Advocate, for the Appellant/Petitioner

Final Decision: Allowed

Judgement

Mr. Mohammad Yaqoob Mir, J. (Oral) - At the very outset learned counsel for the petitioners' states that the Petitioner No. 2, during the

pendency of this petition, has died on 17th December, 2015, therefore, petition will survive only vis-a-vis Petitioners No. 1, 3 and 4.

2. Basically, Petitioner No. 4 was married to one Neetu Mahajan. Out of the wedlock, one male child was born on 5th April, 2013. Initially

relation between husband and wife were cordial, later on same got strained, as a result whereof, both have been living separately. The Petitioner

No. 4-husband filed a petition under Section 13 of the J&K Hindu Marriage Act for dissolution of marriage before the Court of Additional District

Judge (Matrimonial Cases), Jammu, on 16.07.2011 whereas the wife lodged a report in Police Station, Woman Cell, Jammu, on 13.2.2013

registered as FIR No. 03/2013. Petitioners aggrieved thereof have filed the instant petition seeking quashment of the same on the ground that the

complainant with the sole aim of wreaking vengeance has concocted a story when, in fact, petitioners have not committed any offence.

3. Now during the pendency of this petition, there has been another development i.e. Neetu Mahajan (wife) and Petitioner No. 4 (husband) have

entered into a compromise based on which they have filed a petition under Section 15 of the Hindu Marriage Act for grant of divorce by mutual

consent of the parties, before the Court of Additional District Judge (Matrimonial Cases), Jammu, copy of which has been placed on record. In

para 10 of the petition, it has been stated that the parties have voluntarily and out of their free will decided to part away their matrimonial relations.

It has further been resolved and decided that with the presentation of the petition, the parties undertake to withdraw all civil, criminal or cases of

any nature against each other or their relatives with regard to matrimonial dispute or any other matter and if any case is filed after the grant of

decree of divorce by mutual consent by the parties or against any of their relations, same shall be illegal and non-est in the eyes of law and such

action would amount to breach of trust for which such party shall be liable for consequences.

4. Today learned counsel for the petitioners has also produced photocopy of the document under the style ""Divorce by way of mutual settlement"".

Same is taken on record.

5. In view of the said development, now learned counsel for the petitioners would submit that to allow continuation of the investigation or any other

proceedings in connection with case registered as FIR No. 03/2013 P/S Woman Cell, Jammu, would be a sheer abuse of process of the law.

Learned counsel while making submission relied on the judgment of the Hon'ble Apex Court rendered in the case ""Jitendra Raghuvanshi &

Ors. v. Babita Raghuvanshi & Anr." reported in 2013 (4) SCC 58.

6. Ratio of the reported judgment is that when a compromise/ settlement with the help and intervention of family members, friends and well wishers

materializes, then the offences relating to matrimonial disputes shall not be allowed to continue. In such cases power under Section 482 Cr.P.C.

(Central Code) corresponding to Section 561-A Cr.P.C. (State Code) shall be exercised as it is the duty of the Courts to encourage genuine

settlement of matrimonial disputes. Para 12 of the judgment is relevant to be quoted:

12. 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-compound-able, 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.

7. Keeping in view the developments as have taken place coupled with the fact that the petition for dissolution of marriage has been filed in the

year 2011, registration of case FIR No. 03/2013, for commission of offence punishable under Section 498-A read with Section 109 RPC in the

year 2013 i.e. after a period of two years, is not free from suspicion. Be it as it is. The parties having settled the inter se dispute amicably, to allow

continuation of proceedings in the case as registered may give rise to un-necessary situation which may have the effect of negating and undoing the

genuine compromise as has been reached by and between the parties.

8. In the stated facts and circumstances, it is a fit case where the exercise of power under Section 561-A Cr.P.C. shall be quite apposite. Such

power has to be exercised only in exceptional cases. The present one being an exceptional case, therefore, petition is allowed. Case registered as

FIR No. 03/2013, P/S Woman Cell, Jammu, is quashed. Investigation/proceedings in the said case shall be, accordingly, closed.

9. Disposed of as above along with connected Cr. MA.