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[MANU/UP/0375/2004](#)

IN THE HIGH COURT OF ALLAHABAD

Cri. Misc. Writ Petn. No. 1425 of 2001

Decided On: 05.03.2004

Appellants: **Rajeev Verma and Ors.**
Vs.

Respondent: **State of U.P. and Ors.**

Hon'ble Judges:

Sushil Harkauli and Amar Saran, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: A.K. Aditya, Adv.

For Respondents/Defendant: A.G.A.

Subject: Criminal

Catch Words:

Adultery, Assault, Coercion, Commission of the Offence, Constitution of India, Criminal Force, Dowry Death, First Information Report, Gratification, Outrage her Modesty, Public Servant, Punishable with Imprisonment, Special Provision

Acts/Rules/Orders:

Constitution of India - Article 226; Indian Penal Code, 1860 - Sections 498A, 504 and 506; Dowry Prohibition Act - Sections 3 and 4; Criminal Procedure Code (CrPC), 1974 - Section 320

Cases Referred:

B.S. Joshi v. State of Haryana, 2003 (51) All LR 222, AIR 2003 SC 1386, 2003 Cri LJ 2028; Madhu Limey's case, AIR 1978 SC 47, 1978 Cri LJ 165; Km. Madhurima Bhargava v. State of U.P., 1999 (38) All Cri C 367, 1999 All LJ 75, 1999 Cri LJ 685; G.V. Rao v. L.H.V. Prasad

JUDGMENT

Sushil Harkauli, J.

1. The respondent No. 4 who is the father of the wife Sharda Devi lodged an FIR against the husband, who is the petitioner No. 1 and the petitioners No. 2 to 5 at P.S. Phoolpur, District Varanasi under Sections 498-A/504/506, IPC read with Sections 3/4 D.P. Act which was registered as Case Crime No. 225 of 1997. After investigation final report was submitted by the police, which was accepted by C.J.M. Varanasi.

2. A suit for divorce was instituted on 28-8-1999 by the petitioners. On 7-12-1999 written statement was filed in the suit. On 10-2-2000 another FIR was lodged by the respondent No. 4 at Mahila Thana, Allahabad against the petitioners under Section 498-A, IPC and 3/4 D.P. Act which was registered as Case Crime No. 112 of 2000. After investigation charge-sheet has been submitted by the police being Charge-Sheet No. 17 of 2000 dated 28-12-2000 under Sections 498-

A, IPC and 3/4 D.P. Act.

3. This writ petition prays for quashing of the charge-sheet on the ground that the above sequence of events referred above indicate that the allegations in the FIR have been concocted to create a pressure after notice of the divorce suit.

4. The other and more important ground is that the real parties to the dispute i.e. the husband and wife have settled the matter by mutual consent and there has been a written compromise in which the parties have agreed to drop all the proceedings against each other including the criminal case in which charge-sheet has been submitted. Paragraph No. 4 of the compromise annexed as Annexure-8 to this writ petition states that the lady and her father (respondent No. 4) have agreed to give statement in favour of the accused in the police station as well as Court in the criminal case.

5. In this writ petition an interim stay of arrest was granted by order dated 20-3-2001, but the respondent No. 4 has not put in appearance which would indicate that the respondent No. 4 and his daughter have lost interest in the litigation and the alleged compromise is not fabricated or result of coercion. This in effect means that the parties have compounded the alleged offence.

6. The said offences are not compound-able.

7. It has been held by the Supreme Court in the case of B.S. Joshi v. State of Haryana, reported in 2003 (51) All LR 222 : (AIR 2003 SC 1386 : 2003 Cri LJ 2028) that in a proper case the High Court in exercise of its inherent power under Section 482, Cr.P.C. can quash criminal proceedings or FIR or complaint and Section 320, Cr.P.C. which deals with the compounding offence does not limit or effect such powers of the High Court (vide paragraph 13 of the law report).

8. In the same decision the Supreme Court has also laid down that the quashing can be done under Article 226 of the Constitution of India also, notwithstanding Section 320, Cr.P.C. (vide paragraph 7 of the law report).

9. In the light of the above law declared by the Supreme Court and in view of the facts mentioned above we are of the opinion that in the interest of both sides to put an end to these criminal proceedings, because even if the proceedings are not quashed, they are unlikely to result in conviction if the girl, her father and the witnesses do not support the prosecution story in Court.

10. Continuing such futile proceedings would be an unnecessary drain upon the time, money and other resources not only of the parties and witnesses, but also of the Court.

11. In the circumstances, we allow this writ petition and quash the charge-sheet No. 17 of 2000 dated 28-12-2000.

Amar Saran, J.

12. I have had the benefit of reading the concise and lucid reasons given by my learned brother in his judgment. I am in entire agreement with the reasoning of my brother and his proposed order quashing the charge-sheet in this case on merits. But a few words of my own are needed because I think that a recommendation should be made to the Law Commission for making an offence under Section 498-A IPC compoundable.

13. It was heartening to note that the parties to this case have decided to bury the hatchet and have filed an application for compromising the matter on 24-10-2000 before the Judge, Family Court, Allahabad. We are disturbed by the spate of marital litigation, and have begun to wonder whether India is not going the way of the West. It was the sanctity of the institution of marriage

and the understanding and tolerance in the relationship of the spouses which had given strength to couples to tide over critical periods in their lives. A good marriage and family life was the bedrock for bringing up well adjusted children with good values, who ultimately constitute the future of the nation. The Apex Court in a recent judgment (B.S. Joshi v. State of Haryana, 2003 (51) All LR 222 : (AIR 2003 SC 1386 : 2003 Cri LJ 2028) has expressed some of the problems which have arisen in view of the rise in marital discords with great felicity in para 12 of the decision.

"12. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad are very apt for determining the approach required to be kept in view in matrimonial disputes 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 reasons 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 the 'cases' in different Courts".

14. The petitioner was forced to seek refuge in this Hon'ble Court due to the absence of powers under Section 320 of the Code of Criminal Procedure for compounding an offence under Section 498-A of the Penal Code. Initially we doubted whether we could pass appropriate orders taking the compromise application into account, or whether the Hon'ble Supreme Court alone could pass necessary orders in its plenary powers under Article 142 of the Constitution. But this question appears to have been raised and answered in the above-quoted case of B.S. Joshi, (AIR 2003 SC 1386) which was examining the correctness of the High Courts' view which had by the impugned judgment dismissed the petition filed by the appellants seeking quashing of the FIR, holding that offences under Sections 498-A and 406, IPC being non-compoundable, the inherent powers could not be invoked by passing the mandatory provisions of Section 320, Cr.P.C. In this connection paras 1 and 7 of the judgment in B.S. Joshi which raise and answer the High Court's objections may be usefully perused.

Para 1 : "The question that falls for determination in the instant case is, about the ambit of the inherent powers of the High Court under Section 482, Code of Criminal Procedure (Code) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. The scope and ambit of power under Section 482 has been examined by this Court in catena of earlier decisions, but in the present case, that is required to be considered in relation to matrimonial disputes. The matrimonial disputes of the kind, in the present case, have been on considerable increase in recent time, resulting in filing of complaints by the wife under Sections 498-A and 406, IPC not only against the husband, but his other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof, both sides approach the High Court and jointly pray for quashing of the criminal proceedings or the first information report of complaint filed by the wife under Sections 498-A and 406, IPC, can the prayer be declined on the ground that since the offences are non-compoundable under Section 320 of the Code, and, therefore, it is not permissible for the Court to quash the criminal proceedings or F.I.R. or complaint."

Para 7 : "It is thus, clear that Madhu Limey's case (AIR 1978 SC 47 : 1978 Cri LJ 165) does not lay down any general proposition limiting power of quashing the criminal proceedings or F.I.R. or complaint as vested in Section 482 of the Code or extra-

ordinary 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 F.I.R. 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. The Apex Court in B.S. Joshi's case (AIR 2003 SC 1386 : 2003 Cri LJ 2028) further pointed out that any prosecution where the wife does not support the prosecution version would be a lame prosecution with no likelihood of conviction. According to the decision (para 9), there may be many reasons for the wife not supporting the imputations. "It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds." It would be improper in such situations for the Court to refuse a bona fide application on the ground that this would amount to quashing a non-compoundable offence.

16. However I still think that the proper forum where the compromise application could have been properly considered, the averments and the voluntariness of the compromise could have been verified, and the appropriateness for allowing the parties to compromise the matter could have been considered, was the trial Court before whom the matter was at large and which was aware of the local situation. It is only because of the want of such a forum and procedure that we have been constrained to pass this order in the present writ petition.

17. It is not clear why Section 498-A I.P.C. has not been made compoundable. Whether it was due to inadvertence on part of the law makers, or whether it was the result of pressure from women's groups.

18. It may be true that some special provisions such as Section 304-B I.P.C. for checking the growing menace of dowry deaths, and Section 498-A IPC for domestic cruelty and violence against women were needed because increasing attacks on women were becoming the order of the day. With this end in view Section 498-A IPC was introduced on 21-12-1983 by Criminal Law (Second Amendment) Act No. 46 of 1983. The provision has provided some succour where the natal family of the woman, or some women's group has come forward to support the woman in her quest for justice.

19. The provision however has on occasion become an instrument of misuse. Reports from the subordinate Courts indicate that entire families of the accused, including old women are languishing in jail for days till they are granted bail by the Sessions Courts or the High Court because Magistrates have become fearful of granting bail in these cases because of public outcry even though the case is only punishable with imprisonment up to three years. This on occasion results in the abdication of their powers by the Magistrate before the Police or the complainant.

20. An all too easy resort to criminal prosecution under this provision may sometimes result in an irrevocable break down of the marriage, which may have been avoided if the parties had first sought to settle their disputes outside Court on their own or with the help of intermediaries. An incident of violence against the wife, although never condonable could have been the result of a complex set of factors, which law Courts rarely investigate, as the Courts usually take the position that they are concerned only with the discrete act of violence, but not its background. Two situations where outwardly the violence practiced on the woman may qualitatively appear the same may call for varying responses. Thus where a woman is subjected to cruelty because of an innate wickedness or inhumanity of the husband or his family members or because of greed for dowry, may be a proper case for recourse to proceedings under Section 498-A IPC or under the Dowry Prohibition Act. But in another situation where the man belabours his querulous, quarrelsome wife in a momentary fit of anger, or wrongly vents his frustration on his hapless wife because he has

suddenly lost his job or after he has been unfairly reprimanded by his boss, although condemnable, recourse to criminal proceedings may not be desirable.

21. There could be immediate gratification for the wife or her supporters when they implicate the errant husband or his family members in a case under Section 498-A IPC or succeed in sending them to jail. But what happens thereafter. In the absence of other systems of support and the woman still being largely economically dependent, it is the woman who may become the sufferer in the end if a too early recourse to the law Courts is taken in these matters. It is not like a complaint against an erring neighbour or a stranger who has wronged you. If he is jailed or punished, the complainant is satisfied and his life is not affected significantly because there has to be no further economic relationship between the parties. This is not the case with an inter-dependent relationship like that between the spouses to a marriage. Ultimately however the best safeguard to a woman against domestic violence can only be her acquisition of an equal status with her spouse. This is only possible when she is economically empowered and becomes self-reliant, which in turn can only be ensured when the woman or girl child's education is considered as important as a man's education.

22. The pursuit of the invariably protracted litigation and the need to be repeatedly present on all dates in Court sometimes becomes an engine of oppression not only for the accused but also for the maker of the complaint.

23. The best women's groups therefore resist the heady temptation of rushing to the media tarring the image of the man or his family as soon as there is a complaint of domestic violence by a wife, but first try to go to the bottom of the dispute and to effect a reconciliation between the parties. It is only as a last resort, when all efforts at reconciliation have failed that they seek the help of the law Courts or the police.

24. An analysis of Section 320 Cr. P.C. and an examination of its legislative history shows that usually two classes of cases have been made non-compoundable. These are very grave cases, or cases against the public interest. When basically it is an individual who is aggrieved, those provisions have usually been made compoundable, particularly where the offence is of minor nature. The Law Commission in para 24.66 of its 41st Report in connection with Section 345 of old, 1898 Code of Criminal Procedure which corresponds with the present Section 320 Cr.P.C. has expressed it as follows :

"The broad principle that forms the basis of the present scheme is that where the offence is essentially of a private nature and relatively not serious, it is compoundable".

25. Thus Section 345 Cr. P.C. lists twenty-two Penal Code offences as compoundable at the instance of the aggrieved party without the permission of the Court. In the present 1973 Code these offences subject to some limitations, are Sections 298, 323, 334, 341, 342, 352, 355, 358, 426, 427, 447, 448, 491, 497, 498 and 500, 501, 502, 504, 506 and 508 IPC. Thirty-two Penal Code offences were made compoundable by the aggrieved party with the permission of Court. The corresponding provisions in the new Code of Criminal Procedure subject to some limitations are Sections 324, 325, 335, 337, 338, 343, 344, 346, 354, 357, 379, 381, 403, 406, 407, 408, 411, 414, 417, 418, 419, 420, 421, 422, 423, 424 and 428, 429, 430, 451, 482, 483, 486, 494, 500 and 509 IPC.

26. We find that these sections include offences relating to women such as Section 497 IPC which deals with adultery, Section 498 which deals with enticing or taking away or detaining with criminal intent a married woman. These offences can be compounded by the husband of the woman, and do not require any permission from Court. Section 354 which relates to assault or criminal force to woman with intent to outrage her modesty can be compounded after permission from Court. Specifically with regard to Section 354 IPC which has been made compoundable in the new Code of Criminal Procedure, the 41st Report of the Law Commission while recommending its inclusion

observed as follows in para 24.70 : "We, however, agree with the suggestion that the offence under Section 354 IPC should with the permission of the Court, be compoundable by the woman on whom the assault is committed or to whom criminal force is used." Likewise the offence of marrying again during the lifetime of husband or wife, (Section 494 IPC) has been made compoundable by the aggrieved party with permission of Court.

27. Now Section 498-A IPC would also be in part materia with the above mentioned provisions of crimes relating to women. It deals with punishment for subjecting a married woman to cruelty. The punishment for Section 498-A of three years imprisonment is also comparable with the 2 years imprisonment provided under Section 354 IPC, 5 years imprisonment provided under Section 497 IPC, 2 years imprisonment under Section 498 IPC, and 7 years imprisonment under Section 494 IPC. Thus it is not a graver offence than the other offences relating to women enumerated above.

28. Furthermore both for initiating investigation or for cognizance by a Court under Section 498-A IPC the intervention by the aggrieved woman or her family members is needed. Thus according to the First Schedule of the Code of Criminal Procedure, Section 498-A is only cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative by any public servant. Likewise Section 198-A Cr. P.C. prohibits cognizance by a Court in a case under Section 498-A IPC, except on a police report or a complaint by the aggrieved woman or other relations by blood, marriage or adoption enumerated therein.

29. It then becomes completely illogical and anomalous if action (i.e. both for investigation and for cognizance by a Court) in respect of offences under Section 498-A IPC can only be initiated at the instance of the aggrieved party, yet that party is disempowered from compounding the offence against the other party even then the parties have come to terms.

30. To check misuse, Section 498-A could be made compoundable by the aggrieved under Section 320 (2) Cr. P.C. with permission of Court. The Court could then always refuse to grant permission to compound the offence where it is of the opinion that the application for compounding appears to be coerced or it is not bona fide, or where after a similar compromise on an earlier occasion, the present incident has occurred, and again the matter is being sought to be closed by a compromise. Need for permission by Court before permitting compounding could obviate any mala fide recourse to this provision.

31. The desirability of making offences under Section 498-A IPC compoundable under Section 320 Cr.P.C. has also been emphasized in a Division Bench decision of the Allahabad High Court in the case of Km. Madhurima Bhargava v. State of U.P., 1999 (38) All Cri C 367 : (1999 All LJ 75 : 1999 Cri LJ 685). The following observations have been made in that decision :

"Although this is beyond our scope in this reference to suggest to make the offences in relation to marriage or married life compoundable, yet it would not be out of place to mention that in every provision of law relating to marriage, it has been provided that the Court shall first try to reconcile the dispute between the parties, i.e., husband and wife parties to the marriage and if reconciliation is not possible then to proceed with the case. Reconciliation is nothing else but a compromise of compounding between the parties. The Family Court Act, in which all the family disputes are covered is specific example of this fact. This is with a view to maintain a matrimonial home than to break it and in view of these facts we can only suggest that an offence pertaining to marriages should be made compoundable."

32. In the light of all these observations and the facts and circumstances alluded to in this judgment I think it would be proper to suggest to the Law Commission to consider the appropriateness of making offences under Section 498-A IPC compoundable under Section 320

Cr.P.C. although with the permission of Court. Let a copy of this decision be forwarded by the Registrar General of the Allahabad High Court to the U.P. and Central Law Commissions for appropriate consideration in the matter.

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