

Chhattisgarh High Court

Smt. Chandra Kiran Choudhary And ... vs State Of Chhattisgarh on 29 April, 2003

Equivalent citations: 2003 (3) MPHT 66 CG

Author: K Kuranga

Bench: K Kuranga

ORDER K.H.N. Kuranga, C.J.

1. The petitioners have in this petition filed under Section 482 of the Code of Criminal Procedure prayed for quashing of the proceedings in Criminal Case No. 234 of 1999 pending on the file of the learned Judicial Magistrate, First Class, Raipur for trial for the offences punishable under Sections 498A and 323 read with Section 34 of the Indian Penal Code.

The petitioners have stated in the petition as follows :--

"(1) The marriage of petitioner No. 1 Chandra Kiran with petitioner No. 2 Ajay was solemnised at Mahasamund on 15-2-1994. The couple were living happily and peacefully but at the instigation of her parents and with a view to get her husband separated from the joint family she lodged FIR on 12-1-1996 with Mahasamund Police alleging commission of offences under Sections 498A and 323 read with Section 34 of the Indian Penal Code.

(2) That, the petitioner No. 4 Anand Ram is the father-in-law and petitioner No. 3 Sushila Choudhary is the mother-in-law of petitioner No. 1. Petitioner No. 5 Smt. Lekha Hirvani is the Nanad (sister-in-law.) of petitioner No. 1.

(3) The present petition for quashing the criminal proceedings is being preferred because of subsequent development inasmuch as in the course of proceedings petitioner No. 1 who is the wife/prosecutrix and the petitioner No. 2 who is husband and one of the accused has compromised before the Hon'ble High Court of Judicature at Jabalpur in Civil Revision No. 608 of 1998, which in turn arose out of proceedings under Section 9 of the Hindu Marriage Act, 1956, the parties agreed to start a new life and to live together. Since thereafter, i.e., from 25-1-2000 onwards petitioner No. 1 is living in her matrimonial home in an absolutely peaceful and happy manner. She has visited her parental house twice during this period. A copy of the order dated 25-1-2000 passed in Civil Revision No. 608 of 1998 is filed herewith as Annexure P-1.

(4) That, in the course of trial statement of petitioner No. 1 has been recorded before the Trial Court on 17-12-1999 vide Annexure P-2. The order in civil revision was passed about a month after recording her evidence. On that day her cross-examination was not complete which was recorded subsequently on 21-7-2000 vide Annexure P-3. In this statement she has categorically admitted that even during the pendency of criminal case the parties were in talking terms and either directly or through mediators and negotiation for finding a solution acceptable to both the parties was going on. She further admits that in the course of proceedings under Section 9 of the Hindu Marriage Act her husband has offered her to accompany him for living together and that the Trial Court had also directed her to go along with her husband. In Para 25 she has stated in categorical terms that after passing of the order (Annexure P-1) in the High Court she is residing with her husband in the

matrimonial house that no cruelty/assault/demand of dowry is being made from her and that her marital life is going on smoothly.

(5) That, after recording of the remaining cross-examination of the prosecutrix vide Annexure P-3 an application was moved by the accused persons as well as by the petitioner No. 1/prosecutrix vide Annexures P-4 and P-5 respectively for dropping the proceeding and withdrawal from the prosecution. Along with the application of petitioner No. 1 her affidavit was also submitted vide Annexure P-6. In the application (Annexure P- 5) and affidavit (Annexure P-6) she has stated in no uncertain terms that there is no subsisting ill-will between her and the accused persons and she is leading a happy and peaceful marital life and that the earlier report was filed because of misunderstanding and confusion. She further states that the stability in her life should be allowed to prevail and therefore she is not willing to proceed any further in the matter.

(6) That, the learned Trial Court without properly appreciating the legal impact of the applications and affidavit has rejected the application (Annexure P-7) by order dated 30-1-2001 and refused to drop the proceedings and at the same time has observed that since the offence under Section 498A of the IPC is not compoundable and the witnesses have deposed against the accused persons and also that similar application was earlier rejected, the application could not be allowed. It is respectfully submitted that the learned Trial Court has not properly exercised the jurisdiction and going by the tenor of the order the petitioners apprehend that in spite of the husband and the wife living together and she having condoned the cruelty, if any, alleged in the charge-sheet, the petitioners may suffer an adverse order which shall be an abuse of the process of the Court.

(7) That, in view of the consistent stand of the prosecutrix/ petitioner No. 1 and her willingness to provide stability to her marital life, the learned Trial Court ought to have dropped the proceedings that in any case the criminal proceedings deserve to be quashed in the interest of justice.

(8) The petitioners respectfully submit that mere technicalities and niceties of legal procedure may not be allowed to thwart the cause of substantial justice. In the present case, the continuation of proceedings may cause irreparable harm to the petitioners and though it may appear to cause harm to petitioner Nos. 2 to 5 only but in essence it shall cause substantial injury to petitioner No. 1 who is the informant/wife of accused No. 2/petitioner No. 2.

(9) In the facts and circumstances of the case, the proceedings of Criminal Case No. 234 of 1999 pending in the Court of Judicial Magistrate, First Class, Raipur for the offences punishable under Sections 498A and 323 read with Section 34 of the Indian Penal Code deserve to be quashed."

2. In support of this petition the affidavit of Ajay Kumar son of Anand Ram Choudhary petitioner No. 2, i.e., the husband of petitioner No. 1 Chandrakiran Choudhary has been filed.

3. On 28-4-2003 two affidavits namely of Chandrakiran Choudhary petitioner No. 1 and Ajay Kumar Choudhary petitioner No. 2, husband of petitioner No. 1 have been filed. Certain documents have also been produced.

4. Petitioner No. 1 Chandrakiran has stated in her affidavit that because of minor dispute a report was lodged by her on 12-1-1996 for the offences under Sections 498A and 323 read with Section 34 of the Indian Penal Code and the trial is pending in the Court of Judicial Magistrate, First Class, Raipur. She has stated that she filed the petition under Section 9 of the Hindu Marriage Act (for short the 'Act') for restitution of conjugal rights in which an order under Section 24 of the Act was passed on 22-12-1997. That order was challenged by her in the High Court of Madhya Pradesh in Civil Revision No. 608 of 1998. During the pendency of the said petition sincere efforts were made to arrive at a settlement and on 21-5-2000 the matter was settled in the course of hearing of the said petition and thereafter she is residing with her husband at Kasaridih, Durg. After 25-1-2000 there has been no dispute or ill-will with her husband or any other family member including petitioner Nos. 3 to 5 and the settlement was reached without any coercion, duress or inducement. They have decided to live in a happy and peaceful atmosphere for the rest of their life. Civil Revision No. 608 of 1998 was eventually dismissed as both the parties pleaded no instructions as per Annexure A-8. Her husband had earlier preferred a suit for judicial separation namely Civil Suit No. 166-A of 1995 which was withdrawn on 12-3-1996 as per Annexure A-9. The suit under Section 9 of the Act was also dismissed for want of appearance, as after 25-1-2000 she did not take any interest in continuing the proceedings for restitution of conjugal rights as they were residing together. She has further stated that as on today no other proceeding is pending either civil or criminal except the impugned proceedings.

5. Ajay Kumar Choudhary petitioner No. 2 has also filed an affidavit stating that he married Chandrakiran petitioner No. 1 on 15-2-1994. On some minor dispute the relation in the family was disturbed giving rise to initiation of legal proceedings by him as well as by his wife. However, in due course of time they realized that no useful purpose would be served in proceeding ahead in legal battle and that for the sake of stability in life they have decided to reside together for getting all previous happiness and since after 25-1-2000 they are united and came back together from Jabalpur to Bhilai after successful counseling in the course of hearing in Civil Revision No. 608 of 1998. He has stated that they have reached genuine settlement and that no matrimonial dispute is pending between the parties. The proceeding under Section 10 of the Act has already been withdrawn by him as per Annexure A-9 and the proceeding under Section 9 of the Act initiated by his wife has also been dismissed after the re-union. He has stated that the continuation of the proceedings may disturb the peace and happiness brought back in the family as a result of the re-union. He has stated that there shall be no dispute in future and he and his wife shall stay together in congenial atmosphere.

6. Learned Counsel appearing for the petitioners Mr. Mishra has relied upon the judgment in B.S. Joshi and Ors. v. State of Haryana and Anr., reported in JT 2003 (3) SC 277, and submitted that for the purposes of securing the ends of justice to the parties in this case, quashing of the criminal proceedings is necessary. Section 320 of the Code of Criminal Procedure would not be a bar to the exercise of the power under Section 482 of the Code of Criminal Procedure by this Court for quashing the criminal proceedings.

7. In B.S. Joshi's case, before the Supreme Court, the wife filed a criminal complaint against her husband alleging the commission of the offences under Sections 498A and 406 of the Indian Penal

Code. Subsequently, there was settlement of disputes and difference between the couple and both of them agreed for mutual divorce and filed a petition accordingly. The wife thereupon filed a petition before the High Court praying for quashing of the FIR. The State, however, opposed the petition. The High Court dismissed the petition holding that since the offences under Sections 498A and 406 of the Indian Penal Code are compoundable, the inherent powers of the Court under Section 482 of the Code of Criminal Procedure can not be invoked to by pass the mandatory provisions of Section 320 of the Code. The question before the Supreme Court was whether the High Court was justified in refusing to exercise its power to quash the proceedings. Allowing the appeal filed before it the Supreme Court held that if for the purposes of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of the power of quashing. The Court has a duty to encourage genuine settlements of matrimonial disputes. Where chance of an ultimate conviction is bleak, the Court while taking into consideration the special facts of a case can quash the criminal proceedings. Any hyper technical view on the provisions of Section 498A would be counter productive and act against the interests of women and against the object for which the provision was enacted. Therefore, 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 of the Court under Section 482 of the Code.

8. The facts of 5.5. Joshi's case (supra) before the Supreme Court and the facts in the case on hand are almost similar.

9. The wife had filed a complaint against her husband alleging commission of offences under Section 498A and 406 of the Indian Penal Code in B.S. Joshi's case (supra) and thereafter she filed a petition before the High Court for quashing of the FIR. In the present case, the wife has filed a complaint against petitioner Nos. 2 to 5 alleging the commission of the offences under Section 498A and 323 read with Section 34 of the Indian Penal Code. Thereafter petitioner No. 1 and petitioner Nos. 2 to 5 both filed petitions before the Trial Court for dropping the proceedings initiated against petitioner Nos. 2 to 5 and for withdrawal from the prosecution. The Trial Court has dismissed the same and thereafter the petitioners have filed this petition under Section 482 of the Code of Criminal Procedure for quashing of the proceedings as aforesaid. In this case, both, the wife and the husband have also filed the affidavits before this Court also. The wife has specifically stated in her affidavit that after 25-4-2000 there has been no dispute or ill-will with her husband or any other family member including petitioner Nos. 3 to 5 and the settlement was reached without any coercion, duress or inducement. The wife and the husband have decided to live in a happy and peaceful atmosphere for the rest of their life. The husband has also filed an affidavit and he has stated in the affidavit that he and his wife, in due course of time have realized that no useful purpose would be served in proceeding ahead in legal battle and that for the sake of stability in life they have decided to reside together for getting all previous happiness and after 25-1-2000 they are united and came back together from Jabalpur to Bhilai after successful counseling in the course of hearing in Civil Revision No. 608 of 1998. He has further stated that they have reached genuine settlement and that no matrimonial dispute is pending between the parties.

10. It is the duty of the Court to encourage genuine settlement of matrimonial disputes and where chances of an ultimate conviction is bleak the Court, while taking into consideration the special facts

of the case, can quash the criminal proceedings as observed by the Supreme Court in the aforesaid case.

11. In the present case, the husband and wife have not only filed affidavits before the Trial Court but they have also filed affidavits before this Court and they have stated in the affidavits that they have sorted out the differences between them and they are living together. In the circumstances, it is difficult to expect the wife to support her allegations made in the complaint filed by her before the police against the petitioner Nos. 2 to 5 here. In that situation, the chance of an ultimate conviction of petitioner Nos. 2 to 5 in this case is bleak. If for the purpose of securing the ends of justice to the parties quashing of the criminal proceedings is necessary, Section 320 of the Code of Criminal Procedure would not be a bar to the exercise of power under Section 482, Cr.PC by this Court, as observed by the Supreme Court.

12. Having regard to the facts and circumstances of the case and the statements made by the petitioners in the petition and the affidavits filed by the husband and the wife, I am of the opinion that no useful purpose would be served by allowing the criminal proceedings to continue. To enable the couple to settle down in life and live peacefully, quashing of the criminal proceedings initiated on the complaint filed by petitioner No. 1 against petitioner Nos. 2 to 5 is necessary. Hence, I am of the opinion that it is a fit case to allow this petition and quash the proceedings in Criminal Case No. 234 of 1999,

13. Accordingly, the petition is allowed. The criminal proceedings in Criminal Case No, 234 of 1999 pending on the file of the Judicial Magistrate, First Class, Raipur for trial for the offences punishable under Sections 498A and 323 read with Section 34 of the Indian Penal Code stand quashed. Bail bonds, if any, executed by petitioner Nos. 2 to 5 before the Trial Court stand cancelled.