

IN THE HIGH COURT OF DELHI AT NEW DELHI

CrI.M.A.No.460/2005 in CrI.M.C.NO.2568/2004

16.03.2005

Date of Decision : March , 2005

Shadi Lal and Anr. Petitioners.

through : Mr.R.K.Taneja, Advocate.

VERSUS

Smt. Anita and State Respondents.

through: Ms.Santosh Kohli, Advocate.

Mr.HJS Ahluwalia, Amicus Curiae

Coram:-

Hon'ble Mr.Justice S.K. Agarwal

1.Whether Reporters of local papers may be allowed to see the judgment?

2.To be referred to the Reporter or not?

3.Whether the Judgment should be reported in the Digest?

S.K. Agarwal, J.

1.By this Petition under Section 482 Cr.P.C., petitioners-Shadi Lal (father-in-law) and Smt.Prakasho Rani (mother-in-law) of the complainant are seeking quashing of the FIR No.117/93 under Sections 406/498-A/34 IPC, P.S. Rajender Nagar, New Delhi, pending trial in the court of Metropolitan Magistrate, New Delhi, on the ground of compromise with the complainant (respondent No.2). The petition is duly supported by affidavits of the petitioners and the complainant (respondent No.2.)

2.Facts in brief are as follows : The above case was registered on the complaint lodged by

Smt.Anita, alleging that she was induced by misrepresentation to marry; that after marriage she was tortured and turned out of the matrimonial home. She made allegations against her husband, as well as sister-in-law (Smt.Sunita); and last para of the complaint reads as under:

Gâ,¬ËœGâ,¬Ëœ I have been tortured by my husband for denying me marital company for over a year and keeping me only after my parents paid them Rs.5 lacs. I have been beaten by my mother-in-law Parkasho Rani and tortured both physically and mentally by Shri Shadi al father-in-law, Suresh brother-in-law and Sunita the sister-in-law. It is requested that necessary legal action may please be taken against all the persons and articles of dowry and Istri-Dhan got restored to me.Gâ,¬â,,çGâ,¬Ëœ

3.After investigation challan was filed against the petitioners and their two sons, namely, Suresh and Naresh. Harish Kumar (husband of the complainant) could not be arrested, as he was stated to be residing in Austria. The cognizance of the offence was taken. By order dated 27.2.1998 it was held that there was no sufficient evidence against two accused, Suresh and Naresh and they were discharged and the charges were framed against the petitioners only. Prosecution moved an application under Section 19 Cr.P.C. for summoning Smt.Sunita, who was named in the FIR but was not challaned. This application was kept pending and was ordered to be considered only after complainant is examined. After framing of the charges evidence of six (6) witnesses, including the complainant and her father has already been recorded. Thereafter it appears that the matter was settled between the petitioners and the complainant and in terms of settlement she was paid Rs.1.0 lac towards full and final settlement of her claim. She also stated in her affidavit that she does not want to pursue her complaint against her husband.

4.I am constrained to note that the petitioners did not plead full facts in the petition. It is not stated that the husband of the complainant is living abroad; that he did not participate in the proceedings and that his name was kept in column number 2 of the charge-sheet filed by the Police. Petitioners also did not plead that the application of prosecution under section 319 Cr.P.C. for taking cognizance against Smt.Sunita was kept pending and was ordered to be considered after the statement of the complainant was recorded, which has now been recorded. These facts came to the notice of the Court only when some doubt was raised about allegations against the husband and State was directed to file a short affidavit. SHO concerned filed the Status Report which was equally vague, consequently the trial court record was ordered to be summoned. Ms.Santosh Kohli, learned counsel for State did not appear in the forenoon, when the matter reached for hearing and Mr.HJS Ahluwalia, advocate, who was present in the Court was appointed as Amicus Curiae in the matter and he was asked to go through the file and render necessary assistance.

5. I have heard learned counsel for the parties and have been taken through the record.

6. Mr. Ahluwalia, learned Amicus Curiae argued that the complainant appears to have compromised the matter with the petitioners, but husband of the complainant did not care to join investigation, whereas he along with Smt. Sunita are specifically named in the FIR. Therefore, further investigation and proceedings against them may not be quashed, particularly in view of the conduct of the petitioners. Learned counsel for petitioners argued to the contrary and pleaded that petitioners are aged parents-in-law of the complainant; and there was no intention on their part to withhold facts. They have already suffered pain and agony of criminal trial for more than eleven (11) years. Learned counsel further submitted that nothing was found against Ms. Sunita, and therefore, no challan was filed against her. In the alternative it was also argued that they have no objection if further investigation or proceedings against husband, if any are continued.

7. Law with regard to quashing of the FIR in matrimonial matters to encourage genuine settlement of matrimonial disputes is settled by recent Supreme Court decision in B.S. Joshi and Ors. Vs. State of Haryana and Anr. AIR 2003 SC 1386. It was held that for the purposes of securing ends of justice, quashing of FIR becomes necessary and section 320 would not be a bar to the exercise of power of quashing FIR. The question which falls for consideration is whether the FIR and the proceedings against the petitioners can be quashed, while keeping the same pending against the husband and sister-in-law of the complainant?

8. In order to find out the answer, reference to some provisions of Cr.P.C. would be useful. Criminal law is set in motion in the cognizable offences, on the registration of the First Information Report under section 154 Cr.P.C. After registration of the FIR, investigations begin. Section 2 (h) of Cr.P.C. defines 'investigation' and includes all proceedings under this Code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. On completion of investigations report (charge-sheet) is to be filed under Section 173 Cr.P.C. by the Police Officer, on the basis of which the cognizance is taken; and the proceedings, thus begin. Judicial proceeding is defined under section 2(i) of the Code and includes any proceeding in the course of which evidence is or may be legally taken on oath. Once the matter is settled and money is received in terms of the settlement and an affidavit is filed in support of

the same, continuation of further investigation or the proceedings, would be an abuse of the process of law and cannot be permitted. In view of the same the argument of the learned Amicus Curiae has to be rejected. Whenever the investigation and further proceedings are quashed, it means quashing of FIR also, except when the investigation is quashed on technical grounds. In other words, quashing of investigation and further proceedings necessarily results in quashing of FIR itself, unless otherwise directed.

9. For the foregoing reasons, the petition is allowed. Above noted FIR and proceedings emanating therefrom against the petitioners as well as other accused persons mentioned in the FIR are hereby quashed. Petition stands disposed of DASTI.

S. K. AGARWAL, J.

March , 2005

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