

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1684 OF 2024
(Arising out of SLP (Crl.) No.4195 of 2019)

MALA KAR & ANOTHER

APPELLANTS

VERSUS

STATE OF UTTARAKHAND & ANOTHER

RESPONDENTS

ORDER

1. Leave granted.
2. Being aggrieved by the order dated 22.11.2018 passed by the High Court of Uttarakhand in Criminal Miscellaneous Application (C-482) No.26 of 2016 by which the application filed by the appellant under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of the cognizance order dated 05.01.2016; charge sheet dated 17.11.2015 as well as the entire proceedings of Criminal Case No. 60 of 2016 (State Vs. Jitu Kar and others) initiated under Section 498A of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act, 1961 pending before the Court of the Additional Chief Judicial Magistrate IInd, Dehradun, was dismissed by the High Court, the appellants have preferred this appeal.
3. We have heard learned counsel for the respective private parties as well as learned counsel for the respondent-State at length.

4. It is not in dispute that the marriage between appellant No.2 and respondent No.2 took place on 05.12.2012. There was an *ex-parte* decree of divorce granted by the concerned Family Court on 18.10.2014. In the interregnum, against appellant no.2, a complaint was filed by respondent No.2 on 09.08.2014 on the basis of which an FIR was registered on 06.04.2015, subsequent to the decree of divorce being passed by the Family Court. It is pertinent to observe that pursuant to the decree of divorce, both appellant No.2 as well as respondent No.2 have re-married and are leading their independent lives.

5. In the aforesaid circumstances, the appellants herein sought quashing of the complaint filed by the respondent No.2 herein as well as all proceedings initiated pursuant to the said complaint by filing their application under section 482 of Cr.P.C. before the High Court. The High Court however, dismissed the said application.

6. Hence, the learned counsel for the respective parties have made their submissions in the above back drop of the aforesaid facts.

7. Learned counsel for the appellants submitted that having regard to the fact that both the parties have been divorced and have re-married, no purpose would be served by respondent No.2 seeking to prosecute the criminal case as against the appellants herein. He submitted that it is only after the decree of divorce granted by the Family Court that regarding the complaint made by respondent No.2 that a FIR was filed i.e. when she was not the wife of the appellant No.2. That it was subsequent

to the divorce decree that the FIR was registered and criminal proceedings against the appellants have commenced.

He further submitted that there are judgments of this Court which are to the effect that such complaints and criminal proceedings could be quashed under Article 142 of the Constitution. That having regard to the facts and circumstances of this case, the jurisdiction under Article 142 of the Constitution of India could be exercised so as to do complete justice between the parties. That this is one of the cases where this Court may exercise its jurisdiction under Article 142 of the Constitution of India and grant relief to the appellants herein by quashing the complaint, FIR and all consequential proceedings pursuant thereto. Learned counsel also submitted that in order to do justice to the respondent No.2 herein, the appellant No.2/husband is willing to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) in full and final settlement on her all alleged claims though there are in fact no claims as such made by her before any Court of law as of now. Hence, the appeal may be allowed.

8. Per contra, learned counsel for the respondent No.2 submitted that the complaints were well justified having regard to the acts and omissions of the appellants herein. The divorce decree granted on 18.10.2014 is also an *ex-parte* decree and the same is now sought to be undone by filing of an application which is pending consideration.

Learned counsel Ms. Christi Jain however, submitted that appellant No.2 and respondent No.2 herein have re-married and it is not in doubt

that both parties on divorce, have re-married and are leading their independent lives. That, respondent No.2 for reasons beyond her control, could not take steps for recovery of her Stridhan and other articles which are with the appellants herein. Hence a direction may be issued to the appellants herein to make good the same and that Rs.10,00,000/- which is offered by the appellants herein, may be too meagre an amount. She submitted that the amount which the appellant No.2 has agreed to pay to the respondent No.2 may be enhanced to at least rupees fourteen lakhs so that there is complete justice done to the respondent No.2 herein also. She further stated that having regard to the fact that both the parties have re-married, appropriate orders may be made in this case.

9. Learned counsel for the State also submitted that the factual backdrop of this case would call for appropriate orders to be made in this case.

10. We have narrated the factual details of this case as well as the contentions in detail which would not call for reiteration.

Learned counsel for the appellants has offered a sum of Rs.10,00,000/ (Rupees Ten Lakhs) to be paid *ex-gratia* to the respondent No.2 in terms of full and final settlement of all her claims, if any, on the appellant. We direct the appellant No.2 to pay the said amount within a period of four weeks from today.

It is reiterated that if the said amount is paid by the appellant No.2 herein, then respondent No.2 would have no further claim whatsoever as

against the appellant No.2 herein.

11. This Court in the case of ***Ramawatar vs. State of Madhya Pradesh*** reported in (2022) 13 SCC 635, while considering quashing of proceedings under Section 482 of Cr.P.C. in the context of the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, took into consideration the fact that there had been a settlement arrived at between the parties in the said case and therefore exercising jurisdiction under Article 142 of the Constitution of India had quashed the complaint and the FIR and the subsequent criminal proceedings against the accused therein. The relevant portions of the said judgment are at paragraphs 13, 14 and 15 which are extracted as under:

“13. We, however, put a further caveat that the powers under Article 142 or under Section 482 Cr.P.C., are exercisable in post-conviction matters only where an appeal is pending before one or the other Judicial forum. This is on the premise that an order of conviction does not attain finality till the accused has exhausted his/her legal remedies and the finality is subjudice before an appellate court. The pendency of legal proceedings, be that may be before the final Court, is sine qua non to involve the superior court’s plenary powers to do complete justice. Conversely, where a settlement has ensued post the attainment of all legal remedies, the annulment of proceedings on the basis of a compromise would be impermissible. Such an embargo is necessitated to prevent the accused from gaining an indefinite leverage, for such a settlement/compromise will always be loaded with lurking suspicion about its bona fide. We have already clarified that the purpose of these extraordinary powers is not to incentivise any hollow-hearted agreements between the accused and the victim but to do complete justice by effecting genuine settlement(s).

14. With respect to the second question before us, it must be noted that even though the powers of this Court under Article 142 are wide and far reaching, the same cannot be exercised in a vacuum. True it is that ordinary statutes or any restrictions contained therein, cannot be constructed as a limitation on the

Court's power to do "complete justice". However, this is not to say that this Court can altogether ignore the statutory provisions or other express prohibitions in law. In fact, the Court is obligated to take note of the relevant laws and will have to regulate the use of its power and discretion accordingly.

15. The Constitution Bench decision in the case of Supreme Court Bar Assn. v. Union of India & Anr. has eloquently clarified this point as follows:

"48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem solver in the nebulous areas" (see K. Veeraswami v. Union of India) but the substantive statutory provisions dealing with the subject matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

This Court took note of the peculiar facts arising in the aforesaid case and the fact that a settlement had been arrived at between the parties and consequently, found it appropriate to invoke powers of this Court under Article 142 of the Constitution of India and quashed the criminal proceedings to do complete justice between the parties. Further, this Court set-aside the order of the High Court and allowed the appeal filed therein.

12. Following the aforesaid judgment, in the instant case, we have already noted that there has been a decree of divorce passed between the parties dated 18.10.2014. It is thereafter that on 06.04.2015, the FIR was registered in respect of the criminal complaint filed on 09.08.2014. More significantly, both the appellant No.2 and respondent No.2 have since re-married and are leading their independent lives. Therefore, both parties have accepted the decree of divorce passed by the Family Court on 18.10.2014. Moreover, the appellant No.2-former husband of the respondent No.2 has agreed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as ex-gratia to the respondent No.2 herein in full and final settlement of all her claims, with a prayer to this Court to do complete justice in this matter and for invoking its powers under Article 142 of the Constitution of India.

13. In the circumstances, while invoking our powers under Article 142 of the Constitution, we quash the criminal complaint dated 09.08.2014 as well as the FIR dated 06.04.2015 and all other criminal proceedings commenced pursuant thereto. Consequently, the order dated 22.11.2018 passed by the High Court is set aside.

The appellant No.2 is directed to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the respondent No.2 herein within a period of six weeks from today and also to file an affidavit enclosing the supporting document of having made the said payment to the respondent No.2, before this Court. In the event, the said payment is not paid within a period of six

weeks, respondent No.2 is at liberty to approach this Court in this matter.

The appeal is allowed in the aforesaid terms.

..... J.
[B.V. NAGARATHNA]

..... J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
MARCH 19, 2024

ITEM NO.55

COURT NO.12

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No. 4195 of 2019

(Arising out of impugned final judgment and order dated 22.11.2018 in CRLMA (C-482) No. 26/2016 passed by the High Court of Uttarakhand at Nainital)

MALA KAR & ANR.

Appellant(s)

VERSUS

THE STATE OF UTTARAKHAND & ANR.

Respondent(s)

Date : 19-03-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s) Mr. Siddhartha Chowdhury, AOR
Mr. Jitender Mohapatra, Adv.
Mr. Shaffi Mather, Adv.

For Respondent(s) Mr. Sudarshan Singh Rawat, AOR
Mr. Ashutosh Kumar Sharma, Adv.
Ms. Saakshi Singh Rawat, Adv.
Mr. Sunil, Adv.

Ms. Christi Jain, Adv.
Mr. Kedar Nath Tripathy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of signed order.

Pending application(s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(Signed order is placed on the file)

(MALEKAR NAGARAJ)
COURT MASTER (NSH)