

Delhi High Court

Dr. V.P.Sharma vs State & Anr. on 23 January, 2009

Author: Aruna Suresh

"REPORTABLE"

18#

* HIGH COURT OF DELHI AT NEW DELHI

+ CrI.M.C.3337/2007

Pronounced on: 23.01.2009

DR. V.P. SHARMA PETITIONER
! Through : Petitioner-in-person

Versus

\$ STATE & ANR.RESPONDENTS
^ Through : Respondent-in-person
Mr. O.P. Saxena,APP

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J.

1. Petitioner has filed this petition under Section 482 Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') seeking quashing of four criminal cases, which were registered against him by the respondent on the basis of a compromise dated 2.4.2003 having arrived at between the parties.

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2. Parties to the petition Dr. V.P. Sharma and Dr.Poonam Khanna got married to each other on 18.01.1979. Out of their wedlock, one male child who is mentally impeded was born on 26.11.1981. Parties were having various disputes and differences, which resulted into filing of a petition for divorce by mutual consent on 6.5.2001. It was mutually agreed between the parties that Flat No. 1, DDA, Khirki Village and Shop No. N-15, Malviya Nagar would remain with Dr. Poonam Khanna for maintenance of their son and that property No. C- 18, Shivalik, would be sold off and the sale proceedings would be divided equally. Respondent No. 2, Dr. Poonam Khanna did not join the proceedings in the second motion petition under Section 13 (B) (2) of the Hindu Marriage Act (hereinafter referred as the 'HM Act') and indulged into filing various cases against the petitioner. Respondent No. 2 lodged an FIR No.49/2002 at Police Station Malviya Nagar under Sections

323/341/506 Indian Penal Code (hereinafter referred to as 'IPC'), another FIR No. 422/2002 CrI.M.C. No.3337/2007 Page 2 of 17 under Sections 498A/406 IPC at Police Station Malviya Nagar and also a complaint case under Section 323/341/506 IPC. All these three cases are pending adjudication. Petitioner filed FIR No. 299/2002 under Sections 324/34 IPC on 8.4.2002 against respondent No. 2. On behest of the learned Metropolitan Magistrate all the disputes were settled and a settlement deed was executed inter se the parties on 3.6.2002. As per the settlement deed, Shop No. N-15, Malviya Nagar was to remain with respondent No. 2 for maintenance of the son and property No. C-18, Shivalik was to be sold out and the sale proceeds were to be divided in equal shares. Respondent No. 2 had already sold out Flat No. 1, DDA, Khirki Village prior to the settlement. However, respondent No. 2 backed out from the settlement though the Settlement Deed was got prepared and drafted as per her desire, and the terms and conditions of the settlement deed were not adhered to by the parties especially, respondent No. 2.

3. Petitioner filed a petition seeking custody of his CrI.M.C. No.3337/2007 Page 3 of 17 son, Manu before the Guardian Judge, where, modified settlement deed was executed between the parties on 2.4.2003. This deed of settlement is still in force. Since respondent No. 2 allegedly did not comply with the terms and conditions of the settlement deed, this petition has been filed.

4. On the date of the execution of deed of settlement i.e. 2.4.2003 following cases were pending trial inter se the parties:

a. FIR No. 49/2002, Police Station Malviya Nagar, under Section 323/341/506 IPC.

b. FIR No. 422/2002, under Sections 498A/406 IPC c. Complaint Case under Sections 323/341/506 IPC d. FIR No. 299/2002 under Section 324 IPC e. Case for custody of child in Guardianship Court f. Case under Section 125 Cr.P.C. for maintenance g. Civil Suit No. 249/2002 and 250/2002 for property

5. Parties resolved amicably without any pressure and voluntarily agreed that petitioner would never CrI.M.C. No.3337/2007 Page 4 of 17 interfere in the peaceful living of respondent No. 2 with her handicapped son and would never claim his custody and meeting rights on any grounds whatsoever in future and the petitioner would pay damages of Rs.5,00,000/- to respondent No. 2 in case he raised any issue including the meeting rights of the child, which had been settled between them in terms contained in this settlement deed. Respondent No. 2 would look after her son for whole of her life and would not claim any maintenance either for herself or for her son nor would claim her istridhan in future. However, in case respondent No. 2 decided to remarry, custody of the child would be handed over to the petitioner.

6. It was further decided between the parties that property No.C-18, Shivalik would be sold and the sale proceeds would be distributed in the ratio of 45% to the petitioner and 55% to respondent No. 2 and thereafter parties would withdraw all their respective cases filed in various courts and also the parties would move the matrimonial court in a petition under Section 13B(2) of the HM Act for CrI.M.C. No.3337/2007 Page 5 of 17 grant of divorce.

7. In view of the settlement, neither of the parties would involve the other party in any suit, claim regarding any right, title or interest in respect of any property purchased earlier. Parties also exchanged the documents in respect of portions of properties falling into their respective shares among each other and in case any of the documents were found to be left or lying with any party, the same would be returned to the other party and if required, in future, parties would execute all relevant documents, applications, indemnity bond, declarations, NOC etc.

8. In furtherance of this compromise deed, petitioner and respondent No. 2 jointly moved a petition under Section 13B(2) of the HM Act and decree for divorce was granted by the learned Additional District Judge vide order dated 3.5.2003, keeping in mind the fact that the parties had settled their claims and disputes against each other amicably including claims for dowry articles, maintenance and istridhan, alimony as well as custody of the Crl.M.C. No.3337/2007 Page 6 of 17 child. Condition No. 3 of the settlement deed was accordingly complied with by the parties.

9. Petition under Section 125 Cr.P.C. of the Hindu Adoption and Maintenance Act and Persons with Disabilities Act, 1995 filed by Smt. Dr. Poonam Khanna, was also accordingly withdrawn by her on 3.4.2003 on the basis of the settlement deed. In the said court, the statement of the parties were recorded on 3.4.2003 itself and respondent No. 2 made a statement to the fact that a compromise Ex.C-1 had been arrived at between herself and her husband voluntarily, without any force and coercion. She also admitted her signatures on the agreement and sought permission from the Court to withdraw her petition as settled/compromised. The learned Court while accepting the statement of the parties dismissed the petition as withdrawn/settled/compromised with a direction that parties would be bound by their statement.

10. Similarly, respondent No. 2 withdrew her petition filed under Section 7 and 10 of the Guardian and Wards Act on 29.04.2003 wherein also she Crl.M.C. No.3337/2007 Page 7 of 17 admitted having settled her disputes amicably and voluntarily without force and coercion with the petitioner, her husband. She admitted her signatures on the same, which was exhibited as Ex. C1. She also made a statement before the Guardian Judge that she would be bound by her statement and on her statement, the learned Guardian Judge was pleased to dispose of the petition in terms of the compromise deed (Ex. C1), which was made a part of the decree.

11. Petitioner in adherence to the compromise deed filed an application before the learned Metropolitan Magistrate in FIR No. 299/2004 which was registered at Police Station Malviya Nagar on his complaint against respondent No. 2 for offence under Section 324 IPC seeking permission to compound the offence. However, it was respondent No. 2 who objected to the same and submitted to the Magistrate that terms and conditions of the compromise has not been adhered to by the parties and she did not want to accept the compromise. With the result, petitioner could not Crl.M.C. No.3337/2007 Page 8 of 17 compound offence under Section 324 IPC with respondent No.2. The matter is pending adjudication.

12. Admittedly, respondent No. 2 has not taken any initiative nor has adhered to the terms and conditions of the settlement deed. She has failed to withdraw her criminal cases which were got registered by her against the petitioner. Since respondent No. 2 refused to comply with the terms

and conditions of the compromise deed, petitioner served a notice dated 28.05.2004 upon her but to no effect. This resulted into filing of an application by the petitioner for revival of his suit to get his share in the property at Shivalik. Respondent No. 2 tried to sell away the Shop at Malviya Nagar, sale of which was stayed by the Court. Petitioner filed a petition under Section 482 Cr.P.C. in May, 2005 seeking quashing of the criminal cases but withdrew the same in November, 2006 as respondent No. 2 insisted that criminal proceedings would be withdrawn only after compliance of the conditions as laid down in the Crl.M.C. No.3337/2007 Page 9 of 17 settlement deed which were to be complied with only after sale of the property. Respondent No. 2 allegedly filed another application on 27.08.2007 being C.R.P. No. 388/2005. She moved an application for review in C.R.P. No. 621/2006 wherein her application for enhancement of maintenance of the son was dismissed. A civil suit was also filed by respondent No. 2 for and on behalf of the son, which was subsequently withdrawn.

13. Thus, it is clear that even after arriving at an amicable settlement in terms of compromise deed dated 2.4.2003, respondent No. 2 was not in peace and continued to prosecute the criminal cases filed by her against the petitioner, even civil litigation was also initiated by respondent No. 2 against the petitioner. A civil suit No. 138/2008 was filed by respondent No. 2 after the settlement of 2.4.2003 and similarly another C.S. No. 721/2005 was filed by her for declaration of rights of the disabled son in the Malviya Nagar residential property. It is a settled law that once parties reconcile their Crl.M.C. No.3337/2007 Page 10 of 17 disputes and execute a document containing the terms and conditions of the reconciliation which is partly acted upon, a party cannot withdraw from the compromise and refuse to perform its part of the obligation because it would tantamount to misuse of process of law.

14. As discussed above, respondent No.2 partly performed her part of compromise by withdrawing cases filed under Section 125 Cr.P.C. and Section 7 and 10 of the Guardian and Wards Act and she also joined the petitioner in filing Second Motion petition under Section 13B(2) of the HM Act and cooperated with him to ensure that their marriage was dissolved by decree of divorce by mutual consent. Petitioner had withdrawn the civil litigation which he had filed against respondent No.2. He had got it revived after the settlement when respondent No. 2 failed to perform her part of the remaining terms and conditions of the settlement.

15. In 'Ruchi Aggarwal vs. Amit Kumar Aggarwal & Ors., (2005) 3 SCC 299', wherein parties had Crl.M.C. No.3337/2007 Page 11 of 17 entered into a compromise on the basis whereof appellant obtained divorce from the respondent who then withdrew his petition under Section 9 of the HM Act and appellant however partly performed her part of compromise by withdrawing the case filed under Section 125 Cr.P.C. but did not withdraw her petition filed under Section 498A, 323 and 506 IPC and Section 3 and 4 of the Dowry Prohibition Act, 1961 as agreed in the said compromise. It was observed that the fact that while respondent had performed his part of the compromise, appellant had partially performed her part of the settlement and the fact that she had made a complaint in writing to Family Court under Section 125 Cr.P.C. proceedings that the said compromise was obtained by coercion and then had withdrawn the said complaint and obtained a divorce on the basis of the said compromise; clearly indicated that criminal complaint was filed by the appellant only to harass the respondent and in view thereof it would be an abuse of process of court if said

criminal proceedings are allowed to continue. Crl.M.C. No.3337/2007 Page 12 of 17 The Court was pleased to quash the proceedings in the criminal case.

16. Respondent has submitted that since petitioner committed breach of the compromise, therefore, she was within her rights to perform her part of settlement by not withdrawing the criminal cases which were got registered by her against the petitioner. She has argued that it was agreed between the parties that the petitioner would never interfere in peaceful living of respondent No. 2 with her handicapped son but he has not permitted respondent No.2 to live peacefully with her handicapped son Manu. The petitioner had been interfering in her life. However, she has not been able to explain properly as to how the petitioner has interfered in her peaceful living with her son at Shivalik where she is occupying the ground floor of the premises. True, that petitioner did obtain an order against respondent No. 2 whereby he was permitted to build first floor of the house to be occupied by him because he had no place to live in whereas respondent No. 2 was comfortably placed Crl.M.C. No.3337/2007 Page 13 of 17 on the ground floor of the house. However, the stay order became infructuous when, petitioner withdrew his civil suit filed by him against respondent No. 2, claiming rights in the suit property. After this settlement deed no untoward incident took place inter se the parties except that some civil litigation was initiated by respondent No. 2 regarding property at Shivalik and so by the petitioner. Petitioner also filed an application before the Guardian Judge, seeking custody of the child/meeting rights with the child after this compromise. However, this application was filed only when respondent No. 2 refused to perform her part of the agreement. Petitioner has shown his willingness to withdraw that application but his apprehension is that respondent No. 2 would not withdraw the criminal cases filed by her against the petitioner.

17. As regards sale of the property, both the parties were to find out a buyer, but none has been arranged. Property might not be sold for a number of years for various reasons. To make the petitioner Crl.M.C. No.3337/2007 Page 14 of 17 face trial in criminal cases pending against him for quite some unlimited period and to defer the enforcement of the agreement dated 2.4.2003 till the property is sold, which is unlikely under the circumstances of the case would not be appropriate.

18. Under these circumstances, when dispute was amicably settled, it is in the interest of justice as well as parties that criminal litigation inter se them is brought to an end. It would bring more amicable and peaceful relationship between the parties which would be far more beneficial to the interest of the child who is mentally retarded and needs protection and care in amicable and peaceful atmosphere. Respondent No. 2 has already obtained an injunction order against the petitioner, thereby restraining him not to visit within the radius of 100 meters of the property. With an end to all the litigations inter se the parties a congenial platform would be built for the parties to initiate efforts for sale of the house, sale proceeds of which are to be divided in the ratio of 45:55 between the Crl.M.C. No.3337/2007 Page 15 of 17 petitioner and respondent No. 2. In the backdrop of checkered history of litigation respondent No. 2 cannot be allowed to continue with the cases with a hostile attitude; might be with a view to grab whole of the property.

19. It is the petitioner who has been rendered homeless in this entire litigation even when he has shown his bona fides in executing his part of the compromise. Hence, under the circumstances of this case, where parties have been litigating with each other over a long period to the detriment of

the interest of a mentally retarded child and dispute now seems to be more of property dispute, it is in the interest of justice to bring this entire litigation to an end and to ensure that the relevant clause of the agreement which has become bone of contention; property is sold and sale proceeds are distributed as per respective shares agreed between the parties; that is computed with, this petition is accordingly allowed.

20. FIR No. 49/2002 registered at Police Station Malviya Nagar under Sections 323/341/506 IPC, Crl.M.C. No.3337/2007 Page 16 of 17 another FIR No. 422/2002 under Sections 498A/406 IPC, complaint case under Section 323/341/506 IPC, FIR No. 299/2002 and respective proceedings conducted therein are hereby quashed.

Attested copy of the order be sent to the State as well as the concerned trial courts accordingly for information and compliance.

(ARUNA SURESH) JUDGE January 23, 2009 rd Crl.M.C. No.3337/2007 Page 17 of 17