

S.No. 94
Regular cause list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 134/2019

TANVEER HUSSAIN KHAN

...Petitioner(s)

Through: MR. BHAT FAYAZ – ADV..
V/s

STATE OF J&K AND ANR.

...Respondent(s)

Through: NONE

CORAM:

Hon'ble Mr. Justice Sanjeev Kumar, Judge

ORDER
21-10-2021

01/ This is a petitioner u/s 561-A of the J&K Cr.PC for quashing Challan titled State versus Tanveer Hussain Khan, pending disposal before the Court of Judicial Magistrate Ganderbal (Trial Magistrate), in pursuance of F.I.R No. 49/2018 dated 02-04-2018 u/s 323 and 498-A RPC.

02/ The petitioner and respondent No.2 were married to each other in accordance with the Muslim Personal Law and Shariat. After some time differences arose between them and the same continued until they, amicably, settled their differences in the larger interest of the welfare of their children. However, during the period the relations between the petitioner and respondent No.2 were strained, the respondent No. 2 had filed a criminal complaint on 02-04-2018, which was registered as F.I.R 49/2018 in Police Station Ganderbal, for offences u/s 323 & 498-A RPC.

03/ Since the parties had buried the hatchet, may be, for the welfare of their children, as such, they started living peacefully as husband and wife. They both decided not to pursue any litigation, civil or criminal, against each other. The

petitioner, with a view to get rid of the challan, which was pending disposal before the trial Magistrate, filed the instant petition, arraying the complainant – wife, Mst. Irshada Tanveer, as party respondent No.2. On 25-03-2021, when the matter was listed for hearing, learned counsel for the parties made a statement before this Court that the parties had entered into a compromise and, therefore, the F.I.R registered against the petitioner may be quashed.

04/ Regard being had to the aforesaid submission made by learned counsel for the parties, the Registrar Judicial of this Court was directed to record the statement of the petitioner and respondent No.2. Statement of the parties has been recorded by the Registrar Judicial. Both the parties have acknowledged that an amicable settlement of disputes between them, including the dispute which is the subject matter of this petition, has been arrived at.

05/ Having heard learned counsel for the parties and perused the material on record, I am of the view that allowing the prosecution of the impugned Challan, pending before the Trial Magistrate, would be sheer abuse of process of law for the reason that the complainant and the accused are husband and wife and both of them have, admittedly, settled all their differences amicably. Not only have they started living together as husband and wife but they have also decided not to pursue any litigation, civil or criminal, against each other. The offences are also not such where this Court cannot exercise the discretion to allow the parties to compound the offences in terms of section 320 Cr.PC or by exercise of inherent jurisdiction vested in this Court by section 561-A of J&K Cr.PC (now 482 Cr.PC).

06/ In the case of Gian Singh versus State of Punjab (2012) 10 SCC 303, a constitution Bench of the Hon'ble Supreme Court has observed that Compounding Powers should be exercised by the Court considering the social impact of the crime in question vis-à-vis its individual impact, as a decisive criteria to exercise quashing power by the High Court. It is thus trite that even if the offences are not compoundable u/s 320 Cr.PC, yet this Court, in exercise of its inherent jurisdiction and with a view to render complete justice, may quash the criminal proceedings, particularly, in the matters which are private in nature and do not impact the society at large. In the instant case, due to the estrangement between husband and wife, the wife lodged a criminal complaint. The two later realized that for the welfare of their children, it would be advisable for both of

them to stay together and give their relationship a second chance. With a view to iron out all the creases that had crept in their relationship, it was decided to bury the hatchet and withdraw from all litigations, civil as well as criminal.

07/ In the aforementioned backdrop, allowing the trial to proceed against the husband, initiated at the instance of wife, when both are now living together peacefully, would be sheer abuse of the process of law and would do no good to anybody.

08/ For the foregoing reasons, this petition is **allowed** and the Challan pending disposal before the Judicial Magistrate, Ganderbal, in terms of F.I.R No. 49/2018 dated 02-04-2018, registered in Police Station, Ganderbal, u/s 323 and 498-A RPC, is **quashed**. The petitioner is acquitted of all the charges.

09/ Petition is **disposed** of accordingly along with connected IAs.

(Sanjeev Kumar)
Judge

Srinagar
21-10-2021
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