

Court No. - 90

Case :- APPLICATION U/S 482 No. - 12984 of 2014

Applicant :- Yusuf And 3 Ors

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- R.K. Rathore, Pankaj Sharma, Pravin Kumar Sharma

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicants and learned AGA. None is present on behalf of the respondent no.2.

2. As per office report dated 28.04.2003, notice sent to the respondent no.2 and personally served upon her, however, till date no one is appearing on her behalf.

3. The Applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. beseeching the quashing of Charge sheet and entire further proceeding arising out of the said charge sheet pending before the Court of Additional Civil Judge-II(J.D.)/J.M., J.P. Nagar in Criminal Case No.01 of 2010 (State Vs. Yusuf and others), under Sections 498-A, 323, 504, 506 I.P.C., and Section 3/4 of Dowry Prohibition Act, arising out of case Crime No.3 of 2009, Police Station - Mahila Thana, District-J.P. Nagar.

4. Instant matter is arising out of matrimonial discord. During pendency of the proceeding both the parties have amicably settled their dispute out of the Court. At initial stage, while entertaining the instant application, this Court vide order dated 22.4.2014 has granted interim order considering the compromise took place between the parties. During pendency of the present application, prayer has been made on behalf of counsel for the applicant for issuing a direction to verify the compromise took place between the parties. Having considered the amicable settlement between the parties, this Court has passed an order dated 19.09.2023 to verify the compromise. For ready reference order dated 19.09.2023 is hereby quoted below :

"1. As per office report dated 28.04.2023 no one has put in appearance on behalf of respondent no.2 despite personal service of notice.

2. Heard learned counsel for the applicants and learned A.G.A for the State are present.

3. It is submitted by learned counsel for the applicant that both the parties have amicably settled their dispute out of the court and inked compromise dated 13.11.2013. Copy of the compromise has been filed as Annexure No.3 to the affidavit filed in support of the instant application. It is submitted that the aforesaid compromise application is still pending consideration before the trial court. It is further submitted that both the parties have buried the hatchet, therefore, instant application may be decided on the basis of compromise.

4. In this conspectus, as above, learned trial court is hereby directed to verify the compromise dated 13.11.2013 as mentioned above, in presence of both the parties, after recording their statement, and submit a verification report within a period of one month from the date of appearance of parties who are hereby directed to appear before the court below on 04.10.2023.

5. List this matter on 07.11.2023, along with verification report submitted by the trial court, if any.

6. Till the next date of listing interim order if any is extended."

5. In pursuance of the order dated 19.09.2023 passed by this Court, learned Incharge Civil Judge(J.D.)/FTC - J.M., Amroha, has submitted the compromise verification report dated 06.10.2023 alongwith the copy of the compromise application and supporting affidavit. Perusal of compromise application appended with the report reveals that compromise verification order dated 4.10.2023 has been endorsed on the reverse side of the first page of the compromise. Perusal of the compromise verification report dated 6.10.2023 and compromise verification order dated 4.10.2023 reveals that in pursuance of the order passed by this Court both the parties have appeared before the Court below and they have been identified by their respective counsels. Terms and conditions of the compromise has been spelled out to the parties concerned who have admitted the factum of compromise and stated that they voluntarily entered into compromise without any duress. Accordingly compromise has been verified.

6. It is submitted by learned counsel for the applicants that, in the eventuality of amicable settlement took place between the parties and verification of the compromise by the court competent, instant application may be allowed and the criminal proceedings initiated against the present applicants may be quashed.

7. To quash the cognizance order as well as criminal proceeding, learned counsel for the applicants has relied upon the following judgments of the Hon'ble Apex Court :-

(i) B.S.Joshi & Others Vs. State of Haryana & Others; (2003) 4 SCC 675.

(ii) Nikhil Merchant Vs. Central Bureau of Investigation; (2008) 9 SCC 667.

(iii) Manoj Sharma Vs. State & Others; (2008) 16 SCC 1.

(iv) Gyan Singh Vs. State of Punjab (2012) 10 SCC 303.

(v) Narindra Singh & Others Vs. State of Punjab (2014) 6 SCC 466.

8. In a recent judgment passed by a Three Judges' Bench of the Apex Court in the Case of ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another, reported in AIR 2017 SC 4843***, Hon'ble Supreme Court has summarized the ratio of all the cases decided earlier with respect to quashing of F.I.R./charge-sheet/criminal proceeding on the ground of settlement between the parties and expounded the ten categories in which application under Section 482 could be entertained for quashing the F.I.R./charge-sheet/criminal proceeding on the basis of compromise. Para no. 15 of the said judgement summarizing the proposition in this respect is reproduced below:-

"15. (i) Section 482 preserves the inherent power of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot approximately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

9. Learned AGA has no objection, in case, the instant application is decided by this Court on the basis of compromise application and compromise verification order dated 04.10.2023 took place between the parties, which is duly verified by the court concerned.

10. Having considered the compromise verification report dated 6.10.2023 and compromise verification order dated 04.10.2023 verifying the compromise took place between the parties and with the assistance of the aforesaid guidelines, keeping in view the nature of gravity and severity of the offence, which are more particular in private dispute, it is deemed proper that in order to meet the ends of justice, the present proceeding should be quashed.

In result, dispute between the parties will put to an end, peace will be resorted and relationship between them will be smooth. No useful purpose would be served to keep the present matter pending inasmuch as both the parties have buried the hatchet and as the time passes, it will be difficult to prove the guilt of the accused. The continuation of criminal proceeding would cause oppression and prejudice.

11. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the compromise application and compromise verification order dated 04.10.2023 arrived at between the parties, the present application under Section 482 Cr.P.C. is hereby allowed. The entire criminal proceeding of the aforementioned case, so far as it relates to the present applicants, is hereby quashed.

12. Let a copy of the order be transmitted to the concerned lower Court for necessary action.

Order Date :- 7.11.2023/vkg