

Court No. - 90

Case :- APPLICATION U/S 482 No. - 10617 of 2019

Applicant :- Phoolbadan And 03 Others

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Radha Kant Singh, Bhalendra Rao

Counsel for Opposite Party :- G.A., Prashant Mishra

Hon'ble Dinesh Pathak, J.

1. Learned counsel for the applicant has filed certified copy of the compromise application and certified copy of the compromise verification order dated 28.08.2023 along with the supplementary affidavit, which is taken on record.

2. Heard learned counsel for the applicants, learned counsel for respondent no. 2 and the learned A.G.A.

3. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. beseeching quashing the entire proceeding arising out of Case Crime No. 0149 of 2018 (State Vs. Phool Badan and Others), under Sections 354(kha), 452, 323, 504, 506 I.P.C., Police Station Kaptanganj, District Azamgarh, pending in the Court of learned Upper Session Judicial Magistrate, Court No. 10, Azamgarh on the basis of compromise so entered into between the parties.

4. Respondent no. 2 has lodged an F.I.R. being Case Crime No. 0149 of 2018 levelling allegations of house trespass, thrashing and molestation. It is submitted that during pendency of the proceedings, both the parties have arrived at a compromise and settled their dispute out of the Court. Considering the amicable settlement between the parties this Court, vide order dated 26.04.2023, has directed the parties to get their compromise verified from the court concerned. For ready reference order dated 26.04.2023 is quoted herein below :-

"Heard learned counsel for the applicants, Mr. Prashant Mishra, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 09.11.2018 and the entire proceeding arising out of Case Crime No. 0149 of 2018 (State Vs. Phool Badan and Others), under Sections 354(kha), 452, 323, 504, 506 I.P.C., Police Station Kaptanganj, District Azamgarh, pending in the Court of learned Upper Session Judicial Magistrate, Court No. 10, Azamgarh on the basis of compromise so entered into between the parties.

It is submitted on behalf of the applicants that both the parties are known to

each other very well and the dispute between them is due to some misunderstanding. He further submits that on account of intervention of well-wishers of the applicants and opposite party no. 2, they have settled their disputes and arrived at a compromise. On the basis of said compromise, an affidavit has been filed by opposite party no. 2 before the court below that she does not want to press the criminal proceedings initiated by her against the applicants. It is, thus, contended that proceedings of the aforesaid case be quashed in the light of law laid down by the Apex Court in the case of *Gian Singh v. State of Punjab* : (2012) 10 SCC 303.

Learned counsel for opposite party no. 2 also does not dispute the correctness of the submissions made by the learned counsel for the applicants.

Whether a compromise has taken place or not can at best be ascertained by the court, where the proceedings are pending, after ensuring the presence of the parties before it.

Put up this case on 13.07.2023 as fresh before the appropriate Bench.

Learned counsel for the parties undertake that they shall make a fresh compromise application before the court below within a week from today for verification of the aforesaid compromise. They further undertake to ensure their presence before the court below or any other transferee court, as the case may be, on 17.05.2023 and the court concerned, thereafter, shall ascertain the veracity of the compromise. If the said compromise is verified, the same shall be made part of the record and report to that effect, will be prepared and the parties would be allowed to obtain certified copy thereof and file the same before this Court.

Office is directed to send through FAX a copy of this order within 24 hours.

Parties are also directed to produce certified copy of this order along with a fresh compromise application before the court concerned within a week from today.

Till the next date of listing, no coercive steps would be taken against the applicants in the aforesaid case."

5. Perusal of compromise verification order dated 28.06.2023, filed as Annexure-2 to the supplementary affidavit filed today, reveals that both the parties have appeared before the court concerned in pursuance of the order passed by this Court. They have been identified by their respective counsel. Accordingly, compromise has been verified. For ready reference order dated 28.06.2023 is quoted herein below :-

"सुलहनामा सत्यापन

दिनांक-28.06.2023

वादिनी सुधात्री देवी व अभियुक्त फूलबदन यादव, बजरंगी यादव, बलिराज यादव व अमरेश यादव की तरफ से उपरोक्त आपराधिक प्रकरण में प्रार्थना पत्र दिनांकित 28.06.2023 प्रस्तुत कर निवेदन किया गया है कि प्रकरण में सम्बन्ध में माननीय उच्च न्यायालय में योजित रिट सं०-10617/2019 धारा- 482 दं०प्र०सं० में पारित आदेश दिनांकित 26.04.2023 के अनुपालन में पक्षों की तरफ से प्रस्तुत सुलहनामा तसदीक किये जाने की कृपा करें। प्रार्थना पत्र के साथ माननीय उच्च न्यायालय इलाहाबाद द्वारा उपरोक्त आपराधिक प्रकरण से सम्बन्धित याचिका सं०- 10617/2019 धारा- 482 दं०प्र०सं० में पारित आदेश दिनांकित 26.04.2023 की प्रति दाखिल की गयी है तथा सुलहनामा दाखिल

किया गया है।

आज न्यायालय के समक्ष वादिनी मुकदमा सुधात्री देवी व अभियुक्त फूलबदन यादव, बजरंगी यादव, बलिराज यादव व अमरेश यादव व्यक्तिगत रूप से उपस्थित आये उनकी तरफ से संयुक्त रूप से हस्ताक्षरित सुलहनामा दिनांकित 28.06.2023 दाखिल किया गया है। वादिनी मुकदमा सुधात्री देवी के हस्ताक्षर एवं फोटो की पहचान विद्वान अधिवक्ता तथा अभियुक्त फूलबदन यादव, बजरंगी यादव, बलिराज यादव व अमरेश यादव के हस्ताक्षर एवं फोटो की पहचान उनके विद्वान अधिवक्ता द्वारा किया गया। सुलहनामा दिनांकित 28.06.2023 का सत्यापन न्यायालय द्वारा किया गया।

ह० अपठनीय

28/06/23

न्यायाधिक मजिस्ट्रेट, एफ.टी.सी./माहिला

आजमगढ़।"

6. Learned counsel for the applicants submits that, in the eventuality of settlement/agreement took place between the parties and compromise verification order passed by court competent, instant application may be allowed and the criminal proceedings initiated against the present applicant may be quashed. There is no grudges between them against each other who have buried the hatchet. To quash the cognizance order as well as criminal proceeding, learned counsel for the applicant 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.**

7. 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 misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

8. Learned A.G.A. has no objection, in case, the instant application is decided by this Court on the basis of compromise took place between the parties, which is duly verified by the court concerned.

9. Learned counsel for the opposite party No. 2 has nodded the factum of the compromise entered into between the parties and he has no objection, if the instant application is decided finally on the basis of the said compromise. He also submits that compromise was verified in presence of both the parties, who have voluntarily entered into compromise and opposite party no. 2 does not want to prosecute the present case against the applicant any more as no

dispute remains between the parties.

10. Having considered the compromise verification report, compromise verification order 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 settlement/agreement inked between the parties, the present application under Section 482 Cr.P.C. is hereby **allowed**. The entire criminal proceeding of the aforementioned case is hereby quashed.

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

Order Date :- 8.11.2023

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