

Court No. - 90

Case :- APPLICATION U/S 482 No. - 14970 of 2020

Applicant :- Hemendra Kumar And 4 Others

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

Counsel for Applicant :- Pankaj Kumar Sharma

Counsel for Opposite Party :- G.A.,Rajesh Kumar

Hon'ble Dinesh Pathak,J.

1.Supplementary affidavit filed today is taken on record.

2. Heard learned counsel for the applicants, learned counsel for the opposite party No.2 as well as learned AGA and perused the record.

3. The applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash impugned charge sheet dated 20.06.2020 along with cognizance order as well as entire proceedings of Case No.990 of 2020 (State Vs. Hemendra Kumar & others), arising out of Case Crime No.06 of 2020, under Sections 498A, 354, 323, 506 IPC and Section 3/4 of D.P. Act, Police Station Amapur, District Kasganj, pending in the court of Chief Judicial Magistrate, Kasganj.

4. Instant matter is arising out of matrimonial discord. Having considered the amicable settlement took place between the parties, this Court, vide order dated 08.10.2020, has directed the parties to get their compromise verified from the court concerned.

5. For ready reference, order dated 08.10.2020 is quoted herein below:-

" Heard Mr. Pankaj Kumar Sharma, learned counsel for the applicants and learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been filed for quashing the proceedings of Criminal Case No. 990 of 2020 (State Vs. Hemendra Kumar & Others), arising out of Case Crime No. 06 of 2020, under Sections 498-A, 354, 323, 504 I.P.C. as also under Sections 3/4 D.P. Act, Police Station Amapur, District-Kasganj, pending in the court of Chief Judicial Magistrate, Kasganj in terms of the compromise. Further prayer has been made to stay the proceedings of the aforesaid case.

It is submitted that applicant nos. 1 to 4 are the husband, father-in-law,

mother-in-law and brother-in-law (Devar) of opposite party no.2 respectively. Initially opposite party no.2 for the same incidents, she made an application before the Mahila Thana, Kasganj in which version regarding her molestation by application no.4 i.e. her brother-in-law has not been mentioned, whereas in the first information report the said version has been mentioned. Apart from the above, it is submitted that on account of intervention of their well-wishers, a compromise has been arrived at between the parties on 10th June, 2020. A copy whereof has been filed as annexure-6 to the affidavit accompanying the present application. It is further 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.

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 9th December, 2020 as fresh before the appropriate Bench.

Learned counsel for the parties undertake to ensure the presence of both the parties before the court below or any other transferee court, as the case may be, on 23.11.2020 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 as well as the photocopy of the compromise annexed as Annexure-6 to the affidavit accompanying the present application within a week from today.

Parties are also directed to produce certified copy of this order before the court concerned on the date fixed before it.

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

6. In pursuance of the order dated 08.10.2020, learned court concerned has passed order dated 01.11.2022. However, having considered no specific order with regard to the verification of compromise, this Court has passed the order dated 22.11.2023 directing the court concerned to pass a specific order verifying the compromise. It appears that in pursuance of the order dated 22.11.2023 passed by this Court, parties have appeared before the court below and filed a fresh compromise application dated 05.12.2023 (paper no.29-Aa) supported by joint affidavit of Hemendra Kumar (husband) and Smt. Hridesh (wife) (paper no.30-Aa). Learned court concerned has verified the compromise in presence of both the parties, who were represented/identified by their respective counsel. Compromise verification order dated

05.12.2023 has been endorsed at the reverse side of the first page of compromise dated 05.12.2023. Certified copy of the compromise application supported by an affidavit and the compromise verification order dated 05.12.2023 are collectively filed as Annexure No.SA-1 to the supplementary affidavit. The terms of the compromise has been spelled out to the parties concerned, who have admitted the factum of the compromise and, accordingly, compromise, took place between the parties, has been verified.

7. Learned counsel for the applicants submits that, in the eventuality of amicable settlement arrived at between the parties and the verification of said compromise by the court competent, the instant application may be allowed and entire criminal proceeding may be quashed. It is further submitted that both the parties have buried the hatchet and living peacefully. It is further submitted that there is no grudges between them against each other. 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 took place between the parties, which is duly verified by the court concerned.

10. 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 wants to prosecute the present case against the applicants any more as no dispute remains between the parties.

11. 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.

12. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the compromise arrived at between the parties, which has been duly verified by the concerned court below, the present application under Section 482 Cr.P.C. is hereby **allowed**. The entire criminal proceeding of the aforementioned case is hereby quashed.

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

Order Date :- 8.12.2023

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