

Court No. - 90

Case :- APPLICATION U/S 482 No. - 21994 of 2023

Applicant :- Rakesh @ Pappu And Another

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

Counsel for Applicant :- Vimlesh Kumar

Counsel for Opposite Party :- G.A., Himanshu Kumar Sonkar, Sarthak Singh

Hon'ble Dinesh Pathak, J.

1. Learned counsel for applicants has filed the supplementary affidavit annexing the certified copy of compromise verification order dated 16.09.2023 as S.A.-1 to the supplementary affidavit, which is taken on record.

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

3. The applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing the charge sheet dated 14.09.2021 as well as entire criminal proceedings of Session Trial No.28 of 2022 (State Vs. Vivek @ Ahua and another), arising out of Case Crime No.269 of 2021, under Sections 307, 506 IPC, Police Station Hathras Junction, District Hathras, pending in the court of Session Judge, District Hathras.

4. Opposite party No.2 has lodged an FIR showing the date of occurrence on 12.9.2021 wherein accused (applicants herein) have thrashed the first informant inflicting several injuries. During pendency of trial, both the parties have amicably settled their dispute and arrived at compromise. Having consider the amicable settlement between the parties, this Court, vide order dated 28.08.2023, directed the court below for verification of the compromise application. For ready reference order dated 28.08.2023 is quoted herein below :-

"1. Heard learned counsel for the applicants, learned counsel for the opposite party No.2 as well as learned A.G.A.

2. Applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the charge sheet dated 14.09.2021 as well as entire criminal proceedings of Session Trial No.28 of 2022 (State Vs. Vivek @ Ahua and another), arising out of Case Crime No.269 of 2021, under Sections 307, 506 IPC, Police

Station Hathras Junction, District Hathras, pending in the court of Session Judge, District Hathras.

3. It is submitted by learned counsel for the applicants that due to some misunderstanding, opposite party No.2 has lodged an FIR, being Case Crime No.269 of 2021, with respect to the incident dated 12.09.2021, however, at a later stage, both the parties have amicably settled their dispute out of the Court. It is further submitted that the parties are living peacefully and, accordingly, inked the compromise dated 31.03.2023, which has been filed before the learned trial court. Certified copy of the compromise supported by an affidavit are collectively filed as Annexure No.7 to the application.

4. Learned counsel for the opposite party No.2 has noddred the submissions as raised by learned counsel for the applicants and admitted the factum of amicable settlement between the parties.

5. In this conspectus, as above, learned trial court, before whom compromise application supported by joint affidavit has been filed by the parties, is hereby directed to verify the aforesaid compromise in presence of both the parties, after recording their statements, and submit verification report within a period of one month from the date of appearance of the parties, who are hereby directed to appear before the Court below on 11.09.2023.

6. List this matter on 16.10.2023 along with verification report submitted by learned counsel for the applicants.

7. Till the next date of listing, no coercive action shall be taken against the applicants in the aforesaid criminal case."

5. In pursuance of the order dated 28.08.2023, learned trial court has verified the compromise application by compromise verification order dated 16.09.2023. Certified copy of the compromise verification order dated 16.09.2023 has been filed as Annexure No.1 to the supplementary affidavit filed today. Perusal of order dated 16.09.2023 reveals that both the parties have appeared before the court below and made their statements. They have been identified by their respective counsels. Contents of the compromise has been spelled out to the parties who have admitted the factum of compromise and stated that they entered into the compromise without any duress and prayed for quashing of the aforesaid criminal proceedings on the basis of compromise. For ready reference the order dated 16.09.2023 passed by Additional Sessions Judge, Court No.2, Hathras is quoted herein below :-

न्यायालय अपर जिला एवं सत्र न्यायाधीश, कोर्ट नं० -2, हाथरस।

सत्र परीक्षण सं० 28/2022

राज्य बनाम विवेक उर्फ अहुआ आदि।

अपराध सं० - 269/2021

धारा - 307,506 भा०द०सं०।

थाना- हाथरस जक्शन, हाथरस।

दिनांक **16.09.2023**

पत्रावली पेश हुई। पक्षकारों द्वारा समझौता पत्र माननीय उच्च न्यायालय इलाहाबाद द्वारा अन्तर्गत धारा 482 प्रार्थना पत्र सं० 21994/2023 में पारित आदेश दिनांकित 28.08.2023 के अनुपालन में प्रस्तुत किया। पत्रावलित किया जाए।

पक्षकारों की ओर से नेट से प्राप्त उक्त आदेश की प्रति पूर्व में ही दिनांक 11.09.2023 को दाखिल की जा चुकी है।

माननीय उच्च न्यायालय के आदेश के अनुपालन में पक्षकारगण व्यक्तिगण रूप से आज न्यायालय में उपस्थित हैं। वादी पक्ष की ओर से पी०डब्लू० - 1 वादिया उषा देवी, पी०डब्लू० 2 प्रवीन कुमार भारद्वाज परीक्षित हुए तथा बचाव पक्ष की ओर से अभियुक्तगण डी०डब्लू० - 1 राकेश उर्फ पप्पू एवं डी०डब्लू० - 2 विवेक उर्फ अहुआ के बयान अभिलिखित किये गये। अभियुक्तगण विवेक उर्फ अहुआ व राकेश उर्फ पप्पू की शिनाख्त उसके विद्वान अधिवक्ता श्री बाबू सिंह जादौन द्वारा की गयी तथा वादी पक्ष प्रथम सूचक उषा देवी व मजरुब प्रवीन कुमार भारद्वाज की शिनाख्त उसके विद्वान अधिवक्ता श्री राकेश कुमार सिंह द्वारा की गयी है। समझौता पत्र पक्षकारों को पढ़कर सुनाया गया, जो उन्होंने स्वतन्त्र रूप से सही होना स्वीकार किया। सत्यापन का पृष्ठांकन समझौता पत्र की पुश्त पर अंकित किया गया। माननीय उच्च न्यायालय इलाहाबाद द्वारा बयान व समझौता पत्र को दिनांक 16.10.2023 से पूर्व प्रेषित किये जाने हेतु निर्देशित किया गया है। माननीय उच्च न्यायालय के आदेश का अनुपालन कार्यालय द्वारा किया जावे। पत्रावली वास्ते अग्रेतर दिनांक 16.10.2023 को पेश हो।

अपर सत्र न्यायाधीश कोर्ट नं० 2
हाथरस।

6. Learned counsel for the applicants has submitted that, in the eventuality of settlement of dispute between the parties and the verification report submitted by the learned trial court verifying the compromise took place between the parties, instant application may be allowed and criminal proceedings may be quashed. It is further submitted that now parties have buried the hatchet and there is no grudges between them against each other. It is further submitted that in the light of ratio decided by Hon'ble Apex Court, in the matter of **Narinder Singh & Others Vs. State of Punjab, (2014) 6 SCC 466**, a criminal proceeding for offence u/s 307 I.P.C. can be quashed on the basis of compromise.

7. To quash the cognizance/summoning 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 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 contended that he has no objection in deciding the matter on the basis of compromise which has been duly verified by the court concerned.

10. Learned counsel for the opposite party no. 2 has nodded the factum of 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 applicants any more as no dispute remains between the parties.

11. 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 charge sheet dated 14.09.2021 as well as entire criminal proceedings of Session Trial No.28 of 2022 (State Vs. Vivek @ Ahua and another), arising out of Case Crime No.269 of 2021, under Sections 307, 506 IPC, Police Station Hathras Junction, District Hathras, pending in the court of Session Judge, District Hathras is hereby **quashed**.

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

Order Date :- 16.10.2023

Md Faisal