

Court No. - 90

Case :- APPLICATION U/S 482 No. - 40714 of 2012

Applicant :- Pawan Saini And Others

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

Counsel for Applicant :- Rajesh Kumar

Counsel for Opposite Party :- Govt. Advocate, Ajit Kumar

Hon'ble Dinesh Pathak, J.

1. Certified copy of compromise application, statements of first informant and statement of the prosecutrix have collectively been filed by the applicants as Annexure No.S.A.1 to the supplementary affidavit today in the Court, which is taken on record.

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

3. The present applicants have invoked the inherent power of this Court under Section 482 Cr.P.C. beseeching the quashing of charge sheet dated 14.08.2012 as well as as entire proceedings of Case Crime No.227 of 2012, under Sections 363, 366 , 376, 504, 506 I.P.C., Police Station Aliganj, District Etah, pending in the court of A.C.J.M., Court No.17, Etah on the basis of compromise.

4. Opposite party no.2 has lodged an F.I.R. with an allegation that the present applicants have kidnapped her minor daughter. While entertaining the instant matter, this Court has passed the following interim order dated 30.11.2012 :-

"Heard Rajesh Kumar, learned counsel for the applicants and learned AGA for the State.

The applicants, through the present application under Section 482 Cr.P.C., have invoked the inherent jurisdiction of this Court with a prayer to quash the charge sheet dated 14.8.2012 filed in pursuance of Case Crime No.227 of 2012, u/s 363, 366, 376, 504, 506 IPC, P.S. Aliganj, district Etah.

It has been contended by the learned counsel for the applicant that the applicant no.1 Pawan Saini and applicant no.2 Anamika @ Dirya, the prosecutrix have married to each other. The prosecutrix is aged about 18 years as per medical examination report annexed on page 25 of this application. The Criminal Writ Petition No.7920 of 2012 was filed by the applicants before this Court and have challenged the FIR in which an

interim order was passed by this Court on 25.6.2012. Thereafter, the statement was recorded u/s 164 Cr.P.C. in which she has categorically stated that she is voluntarily living with the applicant no.1 and has married with him at Lucknow and are living as husband and wife, copy of which has been annexed on page 26 to 27 of this application. He further submits that the opposite party no.2 who is against the marriage has initiated the second FIR against the applicants who are the family members of the husband of applicant no.2.

Notice on behalf of opp. party No.1 has been accepted by the learned AGA.

Issue notice to opp. party No.2 returnable within four weeks at the address given in the petition. If the requisites for issuing the notice under Registered Postal Cover With Acknowledgement Due are not filed within ten days, this petition shall stand dismissed without further reference to any Bench of this Court. Opp. party No.2 may file counter affidavit within four weeks. Learned A.G.A. may also file counter affidavit within the same period. Rejoinder affidavit may thereafter be filed within two weeks.

List immediately after expiry of the aforesaid period.

Till the next date of listing, further proceedings of the aforesaid criminal case against the applicant shall remain stayed."

5. During the pendency of the instant matter, both the parties have arrived at compromise and settled their dispute amicably out of the Court in the light of the fact that the prosecutrix and the main accused Pawan Saini have solemnized their marriage in the year 2012. Opposite party no.2, who is the mother of the prosecutrix has accepted the marital relationship of her daughter with Pawan Saini (applicant no.1).

6. Having considered the amicable settlement between the parties, this Court, vide order dated 19.09.2023, amended by order dated 03.10.2023, had directed the court concerned to verify the compromise in presence of the parties. For ready reference order dated 19.09.2023 passed by this Court is quoted hereinbelow:-

"1. Heard learned counsel for the applicants, learned counsel for the respondent no.2 and learned A.G.A for the State are present.

2. It is submitted by learned counsel for the applicants that both the parties have amicably settled their dispute out of the court and buried the hatchet. The prosecutrix had already married with the accused (applicant No.1), there is no grudges between them against each other.

3. Learned counsel for the respondent no.2 (first informant) has nodded the factum of compromise and urged to decide the instant application on the basis thereof.

4. In this conspectus, as above, both the parties are hereby directed to

appear before the court concerned on 25.09.2023 and file their compromise application supported by affidavit. Learned trial court, in case, compromise application filed as mentioned above, shall verify the aforesaid compromise 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.

5. List this matter on 30.10.2023, along with verification report submitted by the trial court, if any.

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

7. In pursuance of the order dated 19.09.2023, learned Additional Chief Judicial Magistrate, Court No.18, Etah has submitted his compromise verification report dated 09.10.2023 along with the copy of compromise application and compromise verification order dated 09.10.2023.

8. Perusal of compromise verification order dated 09.10.2023 reveals that all the accused, except Smt. Laxmi Devi (applicant no.5) and the first informant were appeared before the court and they have been identified by their respective counsels. Accused-applicant no.5 Smt. Laxmi Devi has died. Death certificate of the deceased was filed before the court below, which has been acknowledged by the court concerned. Learned court has observed that compromise application dated 25.09.2023 supported by affidavit has been spelt out to the parties concerned, who have admitted the factum of compromise and stated that both the parties have voluntarily entered into compromise without any duress. Accordingly, compromise has been verified.

9. It is submitted by learned counsel for the applicants that both the parties are major and have solemnized their marriage. Presently, they are living happy married life being husband and wife, therefore, in view of the amicable settlement took place between accused and the first informant and the verification of compromise by the court competent, instant application may be allowed and criminal proceeding initiated against the present applicants may be quashed. Learned counsel for the applicants has also drawn attention of the court towards the ossification test report dated 26.07.2012 wherein medical team has been opined the age of the victim to be 18 years. At the time of verification of compromise, prosecutrix herself has appeared before the court and made her statement on 09.10.2023 to the effect that she voluntarily went with the accused and solemnized marriage according to Hindu Rites and Rituals on 16.03.2012 and since then, she is living with the applicant no.1 (accused) as husband and wife. Statement of

Asha Devi wife of Krishna Kumar (first informant/opposite party no.2) is also appended with the verification report wherein she has admitted/accepted the marital relation of her daughter with the main accused and has urged to finish the criminal proceeding initiated by her.

10. In view of the above, learned counsel for the applicants submits that both the parties have buried the hatchet and there is no grudges between them against each other, who are living peacefully. It is further submitted that to observe the peace and tranquility in the life of both the parties, instant matter is required to be decided finally in the light of the settlement. 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.

11. 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."

12. 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 09.10.2023 took place between the parties, which is duly verified by the court concerned.

13. 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 application and compromise verification order dated 09.10.2023 took place between 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.

14. Having considered the compromise application and compromise verification order dated 09.10.2023 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.

15. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the compromise application dated 09.10.2023 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.

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

Order Date :- 30.10.2023

Jitendra