

Court No. - 90

Case :- APPLICATION U/S 482 No. - 11909 of 2017

Applicant :- Rizwana Bee And 4 Others

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

Counsel for Applicant :- Chandra Bhan Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants as well as learned AGA. No one is present on behalf of private-respondent no.2.
2. The applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing the entire proceeding of Complaint Case No.402 of 2016 (Ikrar Khan Vs. Rizwan and others), under Sections 420, 467, 468 and 471 I.P.C., Police Station Civil Lines, District Badaun, on the basis of compromise, pending in the court of Additional Chief Judicial Magistrate, Badaun.
3. As per the FIR version, respondent no.2 has lodged a complaint levelling allegation of cheating and fault against the present applicants. During pendency of proceeding both the parties have amicably settled their dispute out of the court and inked compromise.
4. Having considered the amicable settlement between the parties, this court, vide order dated 26.04.2017, has directed the court below to verify the compromise allegedly took place between the parties.
5. For ready reference the order dated 26.04.2017 is quoted herein below :-

"The present application under Section 482 Cr.P.C. has been filed for quashing charge-sheet and entire proceedings of Complaint Case No. 402 of 2016 under Sections 420, 467, 468 and 471 IPC, P.S. Civil Lines, District Badaun.

Learned counsel for the applicants submits that a compromise has taken place between the parties and an application to this effect has been moved before the Court below. On the basis of the same, it has been prayed before this Court that the proceedings be quashed keeping in mind the law laid down by the Apex Court in the case of **Gian Singh vs. State of Punjab, (2012) 10 SCC 303**.

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

In view of the above, let this matter be listed after three months before the appropriate

Court.

The matter shall not be treated as tied up or part heard to this Bench.

In the meantime, the court below will proceed to fix a date for securing the presence of the parties to the proceedings before it and proceed thereafter to 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.

Till the next date of listing, if within two weeks from today a certified copy of this order is produced before the court below along with the compromise application or with an application to verify a compromise already placed on record, no coercive steps would be taken against the applicants till verification of the compromise in accordance with the observations made herein above."

6. In pursuance of the order dated 26.04.2017, learned court concerned has verified the compromise vide order dated 22.05.2017. Certified copy of the compromise verification order dated 22.05.2017 has been filed by the applicant along with supplementary affidavit dated 02.04.2023. Having been dissatisfied with the compromise, wherein applicant no.4 has not endorsed his signature, this court has issued a direction vide order dated 19.05.2023 to get the compromise verified afresh in presence of applicant no.4.

7. For ready reference the order dated 19.05.2023 is quoted herein below :-

"Learned counsel for the applicants and learned counsel for the opposite party no.2 are present.

In compliance of the order 26.04.2017 applicants counsel has filed supplementary affidavit along with certified copy of the verification order dated 22.05.2017, but the compromise deed has not been placed before this Court, rather it has been prayed that compromise deed is appended at page 40 of the paper book. If we go through the appended compromise deed, it is filed on behalf of four persons, and Amir Alam @ Pappu, applicant no. 5 has not been made party to that compromise. The signatures of Amir Alam @ Pappu are shown on certified copy of the order sheet deed dated 22.05.2017, which clearly indicates that compromise deed placed before that Court was not the compromise deed which is appended at page 40 of the paper book. Thus, trial court is directed to transmit a certified copy of the compromise deed, which is verified by the trial court vide order dated 22.05.2017. If the learned counsel for the applicants finds that in the trial court compromise had been placed against four applicants only on that condition, he is directed to place the compromise deed on behalf of Amir @ Pappu, applicant no.5 also in the trial court and get it verified in continuation of the order dated 26.04.2017.

List on 07.07.2023 in the additional cause list.

Till next date of listing, no corrective action shall be taken against the applicant."

8. In pursuance of the order dated 19.05.2023, learned VIII-Additional Civil Judge (J.D)/Judicial Magistrate Badaun, has submitted the verification report dated

07.08.2023 along with copy of the compromise and the compromise verification order dated 02.08.2023 which reveals that applicant no.4 and complainant have appeared before the court below and they have identified by their respective learned counsels. Accordingly, compromise has been verified. Learned counsel for the applicant has filed a copy of the compromise application and compromise verification order dated 02.08.2023 along with supplementary affidavit filed today, which is taken on record.

9. Perusal of the compromise verification order dated 22.05.2017 and 02.08.2023 reveals that all the accused and the complainant were entered into compromise on their own volition and there nothing remains to be decided by the court concerned.

10. Learned counsel for the applicant, in the eventuality of the amicable settlement took place between the parties and verification of compromise by the court competent, has submitted that instant application may be allowed and the criminal proceeding may be quashed. It is further submitted that all the accused and the complainant have entered into compromise on their own volition without any duress and coercion. They are living peacefully and they have buried the hatchet and there is no grudges between them against each other.

11. 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.

12. 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."

13. 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.

14. With the assistance of the aforesaid guidelines, having considered the verification order dated 22.05.2017 and 02.08.2023 and 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 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 proceeding of Complaint Case No.402 of 2016 (Ikrar Khan Vs. Rizwan and others), under Sections 420, 467, 468 and 471 I.P.C., Police Station Civil Lines, District Badaun, on the basis of compromise, pending in the court of Additional Chief Judicial Magistrate, Badaun, are hereby quashed.

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

Order Date :- 17.10.2023

A Gautam