

Court No. - 90

Case :- APPLICATION U/S 482 No. - 42039 of 2023

Applicant :- Jahid @ Lalu

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

Counsel for Applicant :- Ajay Nand Pandey, Abhishek Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant and the learned A.G.A. None is present on behalf of respondent no. 2.

2. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the charge-sheet dated 02.09.2020 in Case No. 5097 of 2020 (State vs. Jahid @ Lalu & Others) arising out of Case Crime No. 269 of 2020 under Section 297, 504, 506, 379 I.P.C. and 4/21 Mines and Minerals Act, Police Station Baghpat, District Baghpat pending in the court of Judicial Magistrate, Baghpat.

3. In the peculiar facts and circumstances of the present case and the order proposed to be passed hereunder, this Court proceeds ex parte against the respondent no. 2 without putting him notice, granting liberty to file a recall application, in case any fact or detail as mentioned in the instant application are found incorrect.

4. It is submitted by learned counsel for the applicant that due to some misunderstanding, on instigation of some villagers, an F.I.R. has been lodged by respondent no. 2 against the present applicant, however, at later stage, both the parties have arrived at a compromise and settle their dispute amicably out of the Court.

5. Considering the amicable settlement took place between the parties, a Coordinate Bench of this Court, vide order dated 19.12.2022, has directed the parties to appear before the court below to get their compromise verified and simultaneously the court concerned was directed to verify the compromise in the presence of the parties. The parties were given liberty to approach this Court after their compromise is verified by the court below. For ready reference order dated 19.12.2022 is quoted herein below :-

"Sri Manoj Kumar Mishra, Advocate has filed Vakalatnama on behalf of O.P. No. 2 and the same is taken on record.

Heard learned counsel for the applicant, Sri Manoj Kumar Mishra, learned counsel for the O.P. No. 2, learned A.G.A. for the State and perused the record.

The present application under Section 482 Cr.P.C. has been filed with the

prayer to quash the impugned chargesheet dated 02.09.2022 in Case No. 5097 of 2020 (State Vs. Jahid @ Lalu & others) arising out Case Crime No. 269 of 2020, under Sections 297, 504. 506. 379 I.P.C. and Section 4/21, Mines and Minerals Act, Police Station Baghpat, District Baghpat pending in the Court of Chief Judicial Magistrate, Baghpat.

Learned counsel for the applicant submits that the parties have reconciled their differences and a compromise has been entered between them, copy of compromise deed dated 07.09.2022 has been annexed as Annexure 6 to this affidavit wherein it has been mentioned that opposite party no.2 does not want to press the case. Therefore, no useful purpose would be served in continuing the proceedings before the Court below and the same is not only sheer wastage of time of the Court but also abuse of process of law.

Learned counsel for the opposite party no. 2 does not dispute the correctness of the submissions advanced by the learned counsel for the applicant or the correctness of the documents relied upon by him.

Learned A.G.A., however, submits that it is the concerned court below, which has to verify the fact as to whether the parties have entered into compromise, hence the applicant may approach the concerned court below and move an application with respect to compromise between the parties, which will be decided in accordance with law.

In view of above, without expressing any opinion on the merit of the case, both the parties are directed to appear before the Court below along with compromise deed as well certified copy of this order within two weeks from today. It is expected that Court below may fix a date for the verification of the compromise and after ensuring the presence of the parties, pass an appropriate order with respect to the same in accordance with law, as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order, if there is no other legal impediment. While passing the order verifying the compromise, the Court concerned shall also record the statements of the parties as to whether all the terms and conditions mentioned in the original compromise deed, so filed, have been fulfilled or not?

The Court in that scenario will allow the parties to obtain certified copy of the report as well as compromise and it will be open to the applicant to approach this Court again for quashing of the proceedings.

Till verification of compromise between the parties by the court concerned, no coercive action shall be taken against the applicant in the aforesaid case."

6. In pursuance of the order dated 19.12.2022, both the parties have appeared before the court below and they have been identified by their respective counsel. The first informant and the persons who were shown as witnesses have filed their personal affidavit denying the occurrence of offence, as mentioned in the F.I.R. Affidavit of witnesses and the first informant are collectively filed as Annexure-5 to the affidavit filed in support of the instant application. Learned Chief Judicial Magistrate, Baghpat has passed the compromise verification order dated 14.02.2023. As per observation made by the learned Chief Judicial Magistrate, Baghpat, contents of the compromise has been spelled out to the

parties in open court who have admitted the factum of compromise and put their signatures before the court concerned. Accordingly, compromise has been verified and same has been made part of the record. Certified copy of compromise verification order dated 14.02.2023 has been filed at page no. 61 and 62 of the instant application. For ready reference order dated 14.02.2023 is quoted herein below :

" दिनांक-14.02.2023

पत्रावली पेश हुई। आज उभयपक्ष मय विद्वान अधिवक्ता उपस्थित हैं।

अभियुक्त की ओर से द्वारा अधिवक्ता प्रार्थनापत्र दिनांकित 06.01.2023 मय शपथपत्र एवं मा० उच्च न्यायालय के आदेश दिनांकित 19.12.2022 की अधिवक्ता द्वारा प्रमाणित प्रति के साथ इस आशय का प्रस्तुत किया गया कि उपरोक्त मामले में दोनों पक्षों का फैसला हो चुका है। जिसके संबंध में मा० उच्च न्यायालय में प्रार्थनापत्र अंतर्गत धारा-482 दं०प्र०सं०-42189/2022 योजित किया था। जिसमें मा० उच्च न्यायालय द्वारा आदेश दिनांकित 19.12.2022 से आदेशित किया है कि उक्त समझौतानामा तस्दीक किये जाने के आदेश पारित किये हैं। अतः मुकदमें का निस्तारण किये जाने की याचना की गयी।

सुना एवं पत्रावली का अवलोकन किया गया।

पत्रावली के अवलोकन से विदित होता है कि पूर्व में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांकित 19.12.2022 के अनुपालन में पक्षकारों को समझौतानामा तस्दीक किये जाने हेतु न्यायालय में उपस्थित होने के लिए आदेशित किया गया था।

आज उभयपक्ष मा० उच्च न्यायालय के आदेश के अनुपालन में समझौतानामा तस्दीक किये जाने हेतु उपस्थित हुए। वादी पक्ष की ओर से उपस्थित सरवर की शिनाख्त उनके अधिवक्ता मौ० लुकमान एडवोकेटव अभियुक्त जाहिद की शिनाख्त उनके अधिवक्ता श्री राहुत मलिक एडवोकेट द्वारा की गयी। समझौतानामा उभयपक्षों को पढ़कर सुनाया व समझाया गया। उभयपक्षों द्वारा समझौतानामा के तथ्यों को स्वीकार किया। तदोपरांत उभयपक्षों द्वारा न्यायालय के समक्ष हस्ताक्षर किया गये , जिन्हें उनके अधिवक्तागण द्वारा प्रमाणित किया गया। तदनुसार समझौतानामा तस्दीक किया जाता है। समझौतानामा को पत्रावली का भाग बनाया जाता है।

पत्रावली वास्ते अग्रिम कार्यवाही दिनांक 14.03.2023 को पेश हो।

(राहुल कुमार सिंह)

मुख्य न्यायिक मजिस्ट्रेट, बागपत।"

7. Learned counsel for the applicants submits that, in the eventuality of settlement/agreement took place between the parties

and compromise verification report/order submitted by the court concerned verifying the compromise took place between the parties, instant application may be allowed and the criminal proceedings initiated against the present applicant may be quashed. There is no grudge 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.

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

9. 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.

10. Having considered the compromise verification order dated 14.02.2023 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 :- 16.11.2023

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