

Court No. - 90

Case :- APPLICATION U/S 482 No. - 43657 of 2022

Applicant :- Swami Divyanand Disciple

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

Counsel for Applicant :- Vibhav Prakash Tripathi, Pankaj Kumar Shukla

Counsel for Opposite Party :- G.A., Dharendra Kumar Agrahari

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant, learned counsel for the opposite party No.3 as well as learned AGA and perused the record.

2. Learned counsel for the applicant has filed supplementary affidavit along with certified copy of the compromise verification order dated 04.05.2023 and certified copy of the compromise dated 02.05.2023, which is taken on record.

3. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the impugned order dated 09.12.2022 as well as entire proceedings of Case No.2744 of 2001(State Vs. Divyanand), arising out of Case Crime No.106 of 2001, under Sections 420, 467, 468, 471 IPC, Police Station Karvi, District Chitrakoot, pending in the court of learned Judicial Magistrate-II, Chitrakoot and NBW order dated 20.10.2022.

4. Instant matter is arising out of matrimonial discord. During the pendency of the case, both the parties have arrived at compromise and settled their dispute amicably out of the court. Having considered the amicable settlement took place between the parties, this Court, vide order dated 16.03.2023, has directed the parties to get their compromise verified by the court concerned and, simultaneously, court concerned was directed to submit a compromise verification report.

5. For ready reference, order dated 16.03.2023 is quoted herein below:-

" In Re:- Crl. Misc. Impleadment Application No. 02 of 2023.

The impleadment application has been filed on behalf of legal heir of opposite party no.2. There is no objection by learned counsel for the

applicant.

The impleadment application is allowed.

Let the legal heir of opposite party no.2 be impleaded as opposite party no.3 in the array of parties, during the course of the day.

Order on Order-sheet

Heard Sri Vibhav Prakash Tripathi, learned counsel for the applicant, learned AGA for the State and Sri Dharendra Kumar Agrahari, learned counsel appearing for the opposite party no.2 and perused the record.

The present application under Section 482 Cr.P.C. has been filed for quashing of impugned order dated 09.12.2022 passed by Judicial Magistrate-II, Chitrakoot in Case No. 2744 of 2001(State Vs. Divyanand) arising out of Case Crime No.106 of 2001, under Sections 420, 467, 468, 471 I.P.C., P.S. Karvi, District Chitrakoot as well as NBW order dated 20.10.2022.

It has been stated that the parties have amicably settled their disputes and have entered into the compromise. The compromise deed has been annexed as Annexure 3 to the affidavit filed in support of the application.

Learned counsel for the opposite party no.2 does not dispute the aforesaid facts.

In view of above facts, the applicant shall file an application along with the compromise deed before the concerned Court below within 15 days for verification of the compromise. On receiving the said application the Court below shall take steps for verification of the compromise, within 15 days from date of receiving application and compromise, and shall prepare a report. The parties on filing a suitable application shall also be given a certified copy of the report.

Put up this case on 17.04.2023, as fresh, on which date, the applicant shall file the report of the concerned Court regarding the verification of the compromise.

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

This case shall not be treated as tied up/part heard to this Bench."

6. Due to some personal difficulty, parties could not appear before the court concerned, therefore, vide order dated 17.04.2023, time was extended to appear before the court concerned. For ready reference, order dated 17.04.2023 is quoted herein below:-

"Learned counsel for the applicant states that in compliance of order dated 16.3.2023, the parties were required to present before the court below for verification of compromise within 15 days. It is further submitted that due to unavoidable circumstances the applicant could not appeared before the Court

below within 15 days and now he is ready and willing to appear before the court below for verification of compromise.

In view of above statement, both the parties are directed to appear before the court below on 28.4.2023 for verification of compromise.

List in 1st week of May, 2023.

Interim order, if any, is extended till the next date of listing."

7. In pursuance of the order passed by this Court, both the parties have filed their compromise dated 02.05.2023, which was duly verified by the court concerned by compromise verification order dated 04.05.2023. Certified copy of the compromise application dated 02.05.2023, certified copy of the compromise verification order dated 04.05.2023 and certified copy of the statement made by Satya Prakash Das (opposite party No.3) are filed as Annexure Nos.1 and 2 respectively to the supplementary affidavit filed today

8. Perusal of the compromise verification order dated 04.05.2023 reveals that the first informant namely Mahant Ram Dulare (opposite party No.2) had died on 29.05.2019 and in his place Mahant Satya Prakash (opposite party No.3) entered into compromise. Civil dispute between the parties with respect to the property has already been settled in Original Suit No.33 of 2001 on 04.05.2023. The heir and legal representative of the first informant namely Satya Prakash Das has made his statement on oath to the effect that both the parties have voluntarily entered into compromise without any duress and he is no more interested to prosecute the matter against the present applicant (accused). Both the parties were identified by their respective counsel. The terms and conditions of the compromise has been spelled out to the parties, who have admitted the factum of compromise and, accordingly, compromise has been verified.

9. Learned counsel for the applicant 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. There is no grudges between them against each other. 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.

10. 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."

11. 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.

12. Learned counsel for the opposite party No. 3 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. 3 does not wants to prosecute the present case against the applicant any more as no dispute remains between the parties.

13. 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.

14. 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.

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

Order Date :- 23.11.2023

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