

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 863 of 2015

Anil Makhija S/o Hemchand Makhija Aged About 40 Years R/o Raigarh Bada Motibagh Chowk Police Station Civil Lines, Civil And Rev. Distt. Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Police Station Gol Bazar District Raipur Chhattisgarh.
 2. Bajranj Lal S/o Gairdilal Aged About 75 Years
 3. Kaushliya Aged About 32 Years
 4. Geeta Aged About 29 Years
 5. Santosh Aged About 27 Years
 6. Amrit Kumar Aged About 31
 7. Raj Kumar Nagar Aged About 44 Years S/o Shri Bajranglal Nagar
- Respondent No.2 to 6 represented by Shri Raj Kumar Nagar Through Power Of Attorney And respondent No.2 to 7 are R/o Shyam Nagar, Telibandha, Raipur Chhattisgarh.
8. Sheetal Das Makhija S/o Relumal Makhija Proprietor of Anmol, Raigarh Bada Motibagh Chowk, Raipur Chhattisgarh.

---- Respondents

For Petitioner – Shri Rahul Diwakar, Advocate.
For Respondent No.1/State – Smt. M. Asha, PL.
For Respondents No.2 to 7 – Shri Rahul Tamaskar, Advocate.
For Respondent No.8 – Shri Anand Dadariya, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

15/10/2015

1. Instant petition is against the order dated 15/07/2015 passed in Criminal Revision No. 226/2015 by the Fourth Additional Sessions Judge, Raipur. By such order, the order of the JMFC, Raipur passed in Criminal Case No.4904/2015 on 30/04/2015 was affirmed. The issue pertains to rejection of an application under section 320 (2) and 320 (8) of Cr.P.C. for compromise.

2. As per the prosecution, petitioner Anil Makhija who was holding power of attorney from her mother Smt. Laxmi Nagar had executed a sale deed in respect of Khasra No.222/5 admeasuring 0.036 hectares situated at Telibandha, Raipur, after death of Smt. Laxmi Nagar, on the basis of power of attorney which was executed by her mother during her life time. The sale deed was executed in favour of Sheetal Das Makhija who has been arrayed as respondent No.8. It is not in dispute that after sale deed was registered name of Sheetal Das Makhija was also mutated in respect of the said land and the purchaser is in possession of the said land. Subsequently, a complaint was filed with the averments that the sale deed was actually executed after death of Laxmi Nagar by using power of attorney which was executed in favour of Anil Makhija during life time of mother. Pursuant to that complaint case was registered at Police Station, Gole Bazar and charge sheet was filed under section 420 of IPC. After filing of the charge sheet, further charges under section 467 and 468 of IPC was also framed.

3. Learned counsel for the petitioner would submit that during the pendency of the criminal case a compromise was arrived between the parties and all the beneficiaries, complainant and the accused have entered into compromise and the complainant Raj Kumar Nagar had also compounded the offence. It is stated in the compromise petition that they came to know of the fact that while agreement of sale of the subject land bearing Kharsa No.222/5 admeasuring 0.036 hectares situated at Telibandha was executed, the entire sale consideration was received by the deceased mother namely Laxmi Nagar at the time of agreement itself. Learned counsel heavily relies on the agreement which is placed on record

and would submit that the complainant who would have been the beneficiary of the said sale have ratified the act on the ground that since the mother during her life time has received the entire sale consideration, consequently, no case would be made out. It is further contended that it is not a case where sale deed was executed on by fabricating power of attorney but allegations even if are considered it would lead to show that complaint alleged that the sale deed was executed on the basis of valid power of attorney but the executor was dead on date of sale deed. Consequently, it is contended that issue would not fall under four corners of section 467 and 468 of IPC. He however submits that even otherwise the parties have compounded the offence and it would be futile exercise to go in for trial and accordingly the compromise application which was filed before the court should have been allowed and the accused deserves to be acquitted.

4. Supporting the argument, learned counsel appearing on behalf of the complainant Raj Kumar Nagar would submit that the compromise petition which has been filed in this contains the correct statement of facts. He submits that initially because of the misunderstanding, complaint was made and after knowing the facts the agreement for compromise was executed wherein complainant themselves have stated that reasons for the alleged complaint was of misunderstanding between the parties and no criminality exist.

5. Complainant and the accused are present in the court. Learned State counsel have made detail enquiry and they have also ratified the fact that offence has been compounded and no issue survive so as to

prosecute the petitioner further in this case.

6. I have heard learned counsel for the parties at length, perused the application and the agreement styled as Ikrarnama executed on 19th April, 2013 further also joint application filed by the parties i.e. complainant, beneficiaries and the accused under Section 320 (2) of the Cr.P.C. The document is dated 21/04/2015. In such agreement, it has been recorded that entire sale consideration was received by Smt. Laxmi Nagar at the time of execution of the agreement on 26/08/1993. Agreement further records since the matter is quite old and therefore complainant had made certain averments on the basis of misunderstanding. It also records only on that basis complaint was made against Anil Makhija wherein case was registered bearing Crime No.299/2011 under Section 420 of IPC. Subsequently, the facts were made known to him through one Gurubaksh Singh Bakshi who is friend of his father, the complainant. Agreement further records that no further issue with respect to the subject land bearing khasra No.222/5 admeasuring 0.036 hectares is existing between the heirs of the Laxmi Nagar and the purchaser beneficiary.

7. On perusal of compromise application it shows that it bears signature of the complainant and the accused. It also records the fact that because of the misunderstanding such report was made and the compromise application also refers to agreement dated 20/04/2015 which is not disputed by the parties before this court also.

8. The Supreme Court in case of ***Gian Singh Vs. State of Punjab and (2012)10 SCC 303 : 2012 Cri.L.J4934*** laid down guidelines for quashing of the non-compoundable offences in the event of compromise

being entered into between the parties. Para 49, 50 53, 54 are relevant here and quoted below:

“49. [Section 482](#) of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, ‘nothing in this Code’ which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions [of the Code](#) limits or restricts the inherent power. The guideline for exercise of such power is provided in [Section 482](#) itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that [Section 482](#) confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in [the Code](#) for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision [of the Code](#).

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under [Section 482](#) on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are

different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under [Section 320](#) is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in [Section 320](#) and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under [IPC](#) or offences of moral turpitude under special statutes, like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences

which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

9. Reading of the above quoted paragraphs would show that Hon'ble Supreme Court has held that where certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions where the wrong is basically to the victim and the offender and the victim have settled all the disputes *inter-se* amicably, then irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent powers, quash the criminal proceeding or criminal complaint or F.I.R., if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

10. By application of the aforesaid principles in the instant case, since complainant/respondent No.7 has stated that issue has been amicably settled and predominantly dispute appears to be of the civil nature, parties have amicably settled their dispute, it will be futile exercise to go in for trial as the complainant would not support case of the prosecution in any case. Therefore, considering the submission made, I am convinced of the fact that parties have entered into compromise as per agreement which has been placed on record which is not disputed by the parties.

11. Therefore, considering the gravity of crime and nature of the dispute and since the parties have entered into compromise and the complainant/respondent No.7 do not want to continue the criminal proceedings against the petitioner any longer, I deem it expedient to exercise the inherent power conferred under section 482 Cr.P.C., in the instant case. Consequently, proceedings in Criminal Case No.4904/2015 pending before the court of JMFC, Raipur is quashed which arises out of the Crime No.299/2011 registered at Police Station Gol Bazar, Raipur against the petitioner. Accordingly, petition is allowed. Petitioner is acquitted of the charges.

Sd/-

(Goutam Bhaduri)

JUDGE