

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 86 OF 2015**

Miss. Ciriaca De Souza Dancho,
Daughter of Mr. John De Souza Dancho,
Aged about 23 years, student,
and residing at H.No.F-1, 1st Floor,
Breeze Apartments, Dangui Colony,
Mapusa, Bardez Goa. Petitioner

V e r s u s

1. State of Goa,
Through the Police Inspector,
Mapusa Police Station,
Mapusa Goa.
2. Mr. Surendra Ankush Kambli,
son of Shri Ankush Kambli,
Major in age, married,
Indian National,
and residing at H.No.1164/3,
Volvonem, Tivim,
Bardez Goa. Respondents

Mr. Deepak Gaonkar, Advocate for the petitioner.

Mr. M. Amonkar, Additional Public Prosecutor for respondent no.1.

Mr. S. Redkar, Advocate for respondent no.2.

Coram:- F. M. REIS &
K. L. WADANE, JJ

Date :- 12th August, 2015

ORAL JUDGMENT (Per K. L. Wadane, J)

Heard Mr. D. Gaonkar, learned counsel appearing for
the petitioner, Mr. M. Amonkar, learned Additional Public Prosecutor

appearing for the respondent no.1 and Mr. S. Redkar, learned counsel appearing for the respondent no.2.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. The present petition is filed by the petitioner invoking Writ jurisdiction under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code for seeking permission to compound the offence punishable under Sections 279 of Indian Penal Code and quashing and setting aside the criminal proceedings bearing Criminal Case No. 100/S/2014/C pending before the Court of Judicial Magistrate First Class at Bicholim.

5. The respondent no.2 herein lodged a complaint against the petitioner with respondent no.1 that the petitioner drove a maruti car in rash and negligent manner without proper care and caution while proceeding from Assonora to Mapusa. Consequently, it gave dash to the oncoming Hero Honda and thereby causing injuries to the motor cycle rider i.e. respondent no.2. Pursuant to the

complaint, First Information Report No. 111/2014 dated 17.03.2014 came to be registered at Mapusa Police Station for the offence punishable under Sections 279 and 338 of the Indian Penal Code.

6. After completion of the investigation, the charge sheet came to be filed against the petitioner before the Judicial Magistrate First Class at Bicholim, and the same is registered as Criminal Case No. 100/S/2014/C.

7. The petitioner and respondent no.2 have settled their dispute amicably and they have filed a compromise petition/pursis before the learned Magistrate for compounding of the offence. The learned Magistrate by order dated 06.07.2015 partly allowed the application and compounded the offence punishable under Section 338 of Indian Penal Code. However, the offence punishable under Section 279 of Indian Penal Code is not compoundable. Therefore, the offence under Section 279 of Indian Penal Code was not allowed to be compounded. Hence, this petition.

8. During the course of the hearing, Mr. M. Amonkar, learned Additional Public Prosecutor appearing for the respondent no.1 has no objection to permit the petitioner and the respondent no.2 to compound the offence.

9. The alleged offence committed by the petitioner is admittedly not an heinous and serious offence of mental depravity, murder or rape or dacoity or the offence under special statutes like Prevention of Corruption Act. The offence levelled against the accused person is not private in nature and have no serious impact on the society. Due to the compromise between the petitioner and respondent no.2, the continuation of the criminal proceedings is nothing but abuse of process. Therefore, in the interest of justice, the petitioner and respondent no.2 are permitted to compound the offence even punishable under Section 279 of the Indian Penal Code in view of the observations of the Apex Court in the case of **Gian Singh V/s State of Punjab and Another, reported in (2012) 10 SCC 303**. The Apex Court at para 61 held thus :-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse

of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family

disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

Taking note of the above observations, we are of the opinion that the petitioner and respondent no.2 can be permitted to

compound the offence punishable under Section 279 of Indian Penal Code. The application filed by the petitioner and the respondent no.2 to that effect is hereby allowed. The criminal proceedings bearing Criminal Case No. 100/S/2014/C pending before the Judicial Magistrate First Class, at Bicholim, are hereby quashed and set aside. Rule is made absolute in above terms.

10. The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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