

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE MR. **JUSTICE R.SUBBIAH**

Crl.O.P.No.27040 of 2015

1.R.Palanivel

2.Ravi

3.Parthiban

... Petitioners

Vs

1.State rep. by

The Inspector of Police,

F-5, Choolaimedu Police Station,

Chennai.

2.Neelakandan

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in P.R.C.No.65 of 2012 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

For Petitioners : Mr.V.Kannadasan

For respondents : Mr.C.Emalias,
Addl.Public Prosecutor,
for R.1

ORDER

The present criminal original petition has been filed to call for the records in P.R.C.No.65 of 2012 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

2. The petitioners herein have been arrayed as A.1 to A.3 in P.R.C.No.65 of 2012 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, for the alleged offence punishable under Section 364 (A) I.P.C. The second respondent is the de facto complainant. Now, the present petition has been filed by the petitioners to quash the proceedings in P.R.C.No.65 of 2012 pending before the learned XVII Metropolitan Magistrate, Saidapet, Chennai against them stating that the petitioners and the second respondent have entered into a compromise and the second respondent is ready to withdraw the complaint.

3. But, the learned Additional Public Prosecutor opposed to quash the proceedings in P.R.C.No.65 of 2012 stating that the section mentioned in the FIR viz., Section 364 (A) is non-compoundable one.

4. In view of the objections raised by the learned Additional Public Prosecutor, now it has to be seen as to whether the proceedings in P.R.C.No.65 of 2012 pending against the petitioners could be quashed or not, pursuant to the compromise entered into between the petitioners and the second respondent.

5. Before dealing with the objections raised by the learned Additional Public Prosecutor, it would be appropriate to extract the allegations made in the complaint, which are as follows:-

(a) The complaint was lodged by one Selvaraj, who was an employee under the second respondent. In the complaint, he has stated that he was working in Yaga Manpower Consultant and Travels (P) limited, which is run by the second respondent. On 24.4.2011 at about 11.30 a.m., while he was on duty, the petitioners who are well known to the second respondent came there and shouted at the second respondent stating that "Are you cheating the people by running the travel business ? ". Further, they have stated that if the second respondent failed to repay the amount of Rs.6,00,000/- due to them, they would kill him. By saying so, they caught hold of the

second respondent's shirt and took the second respondent forcibly along with them by dragging him. Hence, the said Selvaraj, the de facto complainant tried to contact the wife of the second respondent and he had also searched for the second respondent. Since he was not in a position to locate him, he lodged the complaint with the first respondent police.

(b) On the basis of the said complaint, a case was registered in Crime No.1128 of 2011 for the alleged offence punishable under Section 364(A) I.P.C. The investigation revealed that the second respondent is running a travel business at Door No.149/90, Nelson Plaza, Nelson Manickam Road, Choolaimedu, Chennai-94. The first petitioner was sent to foreign country through the said travels by getting a sum of Rs.6,00,000/- from the first petitioner. Since the first petitioner did not get any employment in foreign country, he returned to India and asked the second respondent for return of the amount of Rs.6,00,000/-. Since the second respondent was causing delay in repaying the amount, the first petitioner along with the petitioners 2 and 3 threatened the second respondent and kidnapped him. The Inspector of Police arrested the petitioners 1 and 2 and remanded them to judicial custody. Subsequently, they were released on bail.

The third petitioner got anticipatory bail. On completion of investigation, the first respondent police filed final report and the same was taken on file as P.R.C.No.65 of 2012 by the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

6. Now, the petitioners jointly filed this petition under Section 482 Cr.P.C. seeking to quash the proceedings in P.R.C.No.65 of 2012 pending against the petitioners before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, stating that on the intervention of their friends and well wishers, who advised the petitioners and the second respondent to enter into a compromise and amicably resolve the dispute, they have entered into a compromise.

7. In this connection, it may be stated that the present petition under Section 482 Cr.P.C. which is based on the compromise entered into between the parties, was listed on 26.11.2015 before this Court for filing a compromise memo. On that date, the petitioner and the second respondent filed memo of compromise. I heard the submissions made by the learned counsel for the petitioners and enquired the second respondent. When the second respondent was enquired, he had stated that he signed the compromise memo and he

has no objection to quash the proceedings in P.R.C.No.65 of 2012 pending against the petitioners before the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

8. Since the learned Additional Public Prosecutor objected to quash the said proceedings stating that the offence under Section 364(A) I.P.C. is non-compoundable one, the matter was adjourned to today. Today, when the matter was taken up for consideration, after hearing the submissions made on either side, I have carefully gone through the complaint and other documents and I find that the first petitioner is well known to the second respondent and the dispute in question is between these independent parties, having grace of private and personal in nature and also having overwhelmingly and predominantly civil flavour. The parties themselves have amicably resolved the dispute by entering into a compromise. Now, the petitioners have filed this petition under Section 482 Cr.P.C. for quashing the proceedings in P.R.C.No.65 of 2012 pending against them before the learned XVII Metropolitan Magistrate, Saidapet, Chennai. No doubt, the said section is a non-compoundable one. Therefore, the question that arises for consideration is whether the FIR could be quashed when a case was registered for non-compoundable offence ?

In this regard, I went through number of judgments of the Hon'ble Supreme Court in which it has been stated that there is wide difference between the proceedings under Section 320 Cr.P.C. and 482 Cr.P.C. In the said decisions, it has been clearly stated that the criminal proceedings could be quashed under Section 482 Cr.P.C. by the High Court. I do not want to list out all these cases. But, for the present case, it would be sufficient to make reference of the following cases viz.,

(i) (2011) 10 Supreme Court Cases 705 - Shiji alias Pappu and others v. Radhika and another.

(ii) (2012) 10 Supreme Court Cases 303 - Gian Singh v. State of Punjab and another.

(iii) (2014) 6 Supreme Court Cases 466 - Narinder Singh and others v. State of Punjab and another.

9. In the decision reported in **(2011) 10 Supreme Court Cases 705 - Shiji alias Pappu and others v. Radhika and**

another, the Hon'ble Supreme Court in para 17, has held as follows:-

" 17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a Court trying an accused or hearing on appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC

are not for that purpose controlled by Section 320 CrPC. "

10. In the decision reported in **(2012) 10 Supreme Court Cases 303 - Gian Singh v. State of Punjab and another**, the Hon'ble Supreme Court after considering catena of cases on this point, has summarised the legal proposition as follows:-

" 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 FIR 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 a 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, the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end 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. "

11. In the decision reported in **(2014) 6 Supreme Court Cases 466 - Narinder Singh and others v. State of Punjab and another**, the Hon'ble Supreme Court after considering the legal proposition, laid down certain principles as to how the High Court could be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 Cr.P.C., while accepting the settlement and quashing the proceedings or refusing to accept the settlement, with direction to continue with the criminal proceedings. Paras 29.1 and 29.2 of the said judgment are usefully extracted hereunder:-

" 29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives. "

12. After considering the legal proposition relating to quashing of FIR or complaint or criminal proceedings as enunciated in the above cited decisions, I will examine the case on hand in the background of the attendant circumstances.

(i) The victim in the present case viz., the second respondent herein and the first petitioner / accused No.1 are closely known to each other.

(ii) The allegations made in the FIR are all civil in nature since the dispute has arisen only in respect of

getting back the amount paid by the first petitioner to the second respondent.

(iii) The offence is not heinous or serious or against the State.

(iv) A perusal of the materials on record would show that the first petitioner has also lodged a complaint as against the second respondent stating that the second respondent received a sum of Rs.6,00,000/- from the first petitioner assuring him that he would be sent to Canada for job. Instead, the first petitioner was sent only to Africa. The said complaint was registered in Crime No.1135 of 2011 for the offence under Section 420 I.P.C.

(v) The materials on record would show that the petitioners have only asked for return of the amount of Rs.6,00,000/- paid by the first petitioner to the second respondent and hence, the said allegations do not warrant registration of the case under Section 364 (A) I.P.C.

(vi) Since the petitioners and the second respondent had amicably settled the dispute by entering into a compromise, the possibility of conviction will be remote and bleak.

(vii) It is unnecessary to drag on the proceedings of the present case which would cause great oppression and prejudice and extreme injustice to the petitioners, if the proceedings are not quashed.

13. For all the reasons stated above, I am of the opinion that it is a fit case to quash the proceedings pending against the petitioners.

14. In fine, the proceedings in P.R.C.No.65 of 2012 pending against the petitioners before the learned XVII Metropolitan Magistrate, Saidapet, Chennai are quashed and the criminal original petition is allowed.

14.12.2015

Index:Yes/No
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To

- 1.The XVII Metropolitan Magistrate,
Saidapet, Chennai.
- 2.The Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

R.SUBBIAH, J

sbi

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