

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.28692 of 2015

1.K.Muthuramalingam
2.Prakash
3.Praveen
4.Vimal @ Vimal Kumar Petitioners/Accuset 1 to 4

Vs

1.State rep. by
The Inspector of Police,
E.2, Royapettah Police Station,
Chennai.Respondent/Complainant

2.Suraj Respondents/Defacto Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the FIR in Crime No.1223 of 2015 pending investigation on the file of the first respondent Inspector of Police, E.2 Royapettah Police Station, Chennai.

For Petitioners : Mr.K.M.Balaji

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 and quash the FIR in Crime No.1223 of 2015 pending investigation on the file of the first respondent - Inspector of Police, E.2 Royapettah Police Station, Chennai.

2. The petitioners herein are A.1 to A.4 in Crime No.1223 of 2015 on the file of the first respondent police for the alleged offence punishable under Sections 364, 324 and 506 (ii) I.P.C. The second respondent is the de facto complainant. Now, the present petition has been filed by the petitioners to quash the FIR registered against them stating that the petitioners and the second respondent have entered into a

compromise and they have amicably resolved the dispute among themselves.

3. But, the learned Additional Public Prosecutor opposed to quash the FIR in Crime No.1223 of 2015 stating that all the three sections mentioned in the FIR viz., Sections 364, 324 and 506(ii) I.P.C. are non-compoundable.

4. In view of the objections raised by the learned Additional Public Prosecutor, now it has to be seen as to whether the FIR registered 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 second respondent is doing real estate business besides construction of houses on a small scale. During the course of his business, the second respondent came to know the first petitioner, who is the former Deputy Mayor of Tirunelveli and the second petitioner, who always used to make arrangements for financial help to the second respondent. While so, the second respondent requested the second petitioner to make arrangements for loan and the second petitioner also tried to make arrangement for getting loan. In the meanwhile, the second respondent himself made arrangements for getting loan to the tune of Rs.30,00,000/- from one Shankar of T.Nagar, Chennai. At the same time, the second petitioner had also made arrangement for getting loan from the first petitioner. After coming to know about the same, the second petitioner questioned the second respondent as to how he had directly contacted the said Shankar without informing him and quarrelled with the second respondent saying that the second respondent had spoiled the business of the first petitioner and created problem. While so, on 26.3.2015 at about 10.00 p.m., the second respondent was coming to his apartment (where, he along with his wife and child is residing) and at the entrance itself, the petitioners 2 to 4 prevented him and told him that the first petitioner asked them to bring the second respondent. Thus, they asked the second respondent to come along with them. But, the second respondent refused to go along with them and asked them to come inside his house to talk about the matter. So, all the three persons went inside the house of the second respondent for discussion. Immediately, the second petitioner asked the second respondent as to how he could disrespectfully speak about the first petitioner. The second petitioner further questioned the second respondent stating that ' Are you a great man to get the loan directly '. Thus, they created problem inside the house of the

second respondent and then all the three persons have beaten the second respondent with hands and iron rod repeatedly, saying that "you die". The second respondent shouted due to unbearable pain and immediately, all the three persons forcibly dragged him outside of his house and pushed him inside a Hyundai Car bearing registration No.TN 02 AF 9990, which was brought by them and took the second respondent to one Gokul Apartment, Jagannathan Street, T.Nagar, Chennai, where the first petitioner resides. As soon as the car entered inside the compound, the first petitioner came out of his house and quarrelled with the second respondent as to why he had disrespectfully spoken about him and warned him to behave properly, or otherwise, he would kill and bury him. Suddenly, all of them attempted to beat the second respondent. Immediately, the second respondent scaled over the compound wall and reached the main road from where he got into an auto. The petitioners chased him. Thereafter, the second respondent straight away went to the police station and gave a complaint orally and requested the first respondent police to take action against all the petitioners.

(b) The Sub Inspector of Police recorded his complaint and registered a case in Crime No.1223 of 2015 for the alleged offence punishable under Sections 364, 324 and 506(ii) I.P.C. The investigation was taken up by the Inspector of Police. During the course of investigation, the Inspector of Police brought the petitioners 3 and 4 on record. All the petitioners were arrested and remanded to judicial custody. Subsequently, all the petitioners were released on bail.

6. Now, the petitioners jointly filed this petition under Section 482 Cr.P.C. seeking to quash the FIR registered against them 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 27.11.2015 before this Court under the caption ' FOR COMPROMISE '. On that date, 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 had signed the compromise memo and he has no objection to quash the FIR registered against the petitioners in Crime No.1223 of 2015 by the first respondent police.

8. Since the learned Additional Public Prosecutor objected to quash the FIR stating that all the three sections mentioned in the FIR viz., Sections 364, 324 and 506(ii) I.P.C. are non-compoundable, the matter was adjourned to 1.12.2015 and

again, it 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 petitioners 1 and 2 are 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 FIR registered against them. No doubt, all the three sections mentioned in the FIR are non-compoundable. 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 petitioners 1 and 2 / accused Nos.1 and 2 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 loan for the second respondent.

(iii) The offences are not heinous or serious or against the State.

(iv) The petitioners 2 to 4 went to the house of the second respondent on 26.3.2015 to take him to the house of the first petitioner for sorting out the differences as to whether the second respondent spoke disrespectfully about the first petitioner.

(v) The petitioners 2 to 4 went to the house of the second respondent not with any premeditated intention of attacking him.

(vi) The petitioners 2 to 4 went inside the house of the second respondent only on the invitation of the second respondent.

(vii) If the petitioners 2 to 4 went to the house of the second respondent only for attacking him, they would have attacked him at the entrance itself.

(viii) The first petitioner is only said to have warned the second respondent orally.

(ix) After analysing the allegations made in the FIR, I hold that the said allegations do not warrant registration of the case under Sections 364, 324 and 506(ii) I.P.C.

(x) 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.

(xi) 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 FIR is 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 Crime No.1223 of 2015 pending investigation on the file of the first respondent - Inspector of Police, E.2 Royapettah Police Station, Chennai are quashed and the criminal original petition is allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
E.2, Royapettah Police Station,
Chennai.

2. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.28692 of 2015

jsv(CO)
srg(08/01/2016)