



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.02.2015

CORAM:

THE HON'BLE MR.JUSTICE C.T.SELVAM

Cr1.O.P.Nos.2560 & 2758 of 2015

WEB COPY

Cr1.O.P.(MD)No.2560 of 2015:

1. RAMESH
2. SAKTHIVEL
3. AMIRTHARAJ
4. SELVAGANAPATHY
5. B RAJKUMAR
6. VASANTHAKUMAR
7. PRAKASH @ JEYAPRAKASH
8. SUBBURAJ
9. SARAVANAN @ SARAVANAKUMAR
10. MANI @ MANIKANDAN

.. Petitioners

Vs.

1. THE INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
IN CR.NO.634 OF 2013.

2. BALAMURUGAN

. Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and to quash the FIR in Cr.No.634 of 2013 pending on the file of the 1st respondent police in the nature and circumstances of the case.

For Petitioners: Mr.R.RajaMohan

For R1 : Mr.K.Anbarasan, Government Advocate
For R2 : Mr.V.A.Dhana Aravindh Balaji for
M/s.Dhana Law Associates

Cr1.O.P.(MD)No.2758 of 2015:

<https://hcservices.ecourts.gov.in/hcservices/>

1. SELVAM
2. BALAMURUGAN

.. Petitioners



Vs.

1. THE INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
IN CR.NO.633 OF 2013.

2. THE DEPUTY SUPERINTENDENT OF
POLICE, SIVAKASI,
VIRUDHUNAGAR DISTRICT.

3. B.AMIRTHARAJ

.. Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to quash the Charge Sheet in P.R.C.No.16 of 2014 pending on the file of the Judicial Magistrate Court, Sivakasi.

For Petitioners: Mr.V.A.Dhana Aravindh Balaji
for

M/s.Dhana Law Associates

For R1&R2

: Mr.K.Anbarasan

G.A (Crl.side)

For R3

: Mr.R.Rajamohan

C O M M O N O R D E R

Case in Crime No.634 of 2013 has been registered for the offences under Sections 294(b), 323, 307 and 506(ii) IPC. The ten accused therein are the petitioners in Crl.O.P.(MD)No.2560 of 2015 and seek to quash of the case in Crime No.634 of 2013.

2. Case in Crime No.633 of 2013 has been registered for the offences under Sections 294(b), 323 and 324 IPC r/w 3(1)(x) of S.C.S.T. Act. Pursuant to investigation, a charge sheet stands filed informing commission of such offences. The matter is pending committal in P.R.C.No.16 of 2014 on the file of the Judicial Magistrate Court, Sivakasi.

3. The defacto complainant in Crime No.633 of 2013 was a third year Engineering College student. He has informed of a dispute between the residents of two colonies and after facing continues harassment at the hands of the members of the other colony; he questioned the same. They attacked and abused him. Hence, the registration of the case for the aforesaid offences.

4. A reading of both the complaints inform of the occurrence having been taken place owing to the dispute between the youngsters.

5. Presently, a memo of compromise having been filed in court, informing settlement of the dispute, in which, both parties and their respective counsel were signed.



6. As the defacto complainant in case registered in Crime No.633 of 2013 had suffered very many injuries to the head by use of knives and also to other parts of the body, having been beaten with a wooden logs, this Court had certain reservations in accepting the memo of compromise. Learned counsel for petitioner relied on judgment of Hon'ble Supreme Court in (2014) 6 Supreme Court Cases 466 (NARINDER SINGH v. STATE OF PUNJAB), relevance are paragraphs 26 to 33 and the same are extract hereunder:-

"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.

27. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as



mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.

28. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.

29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the



guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

30. After having clarified the legal position in the manner aforesaid, we proceed to discuss the case at hand.



31. In the present case, FIR No.121 dated 14.7.2010 was registered under Section 307/324/323/34 IPC. Investigation was completed, whereafter challan was presented in the court against the petitioner herein. Charges have also been framed; the case is at the stage of recording of evidence. At this juncture, parties entered into compromise on the basis of which petition under Section 482 of the Code was filed by the petitioners namely the accused persons for quashing of the criminal proceedings under the said FIR. As per the copy of the settlement which was annexed along with the petition, the compromise took place between the parties on 12.7.2013 when respectable members of the Gram Panchayat held a meeting under the Chairmanship of Sarpanch. It is stated that on the intervention of the said persons/Panchayat, both the parties were agreed for compromise and have also decided to live with peace in future with each other. It was argued that since the parties have decided to keep harmony between the parties so that in future they are able to live with peace and love and they are the residents of the same village, the High Court should have accepted the said compromise and quash the proceedings.

32. We find from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compel us to take a different view.

33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even



started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly."

7. In circumstances where occurrence in the instant case have been occasioned by a rivalry between residents of two colonies and they now have buried the hatchet, this Court finds applicable the considerations that weighed with Hon'ble Supreme Court which find expression in paragraph 33 extracted above. In the circumstances, this Court is inclined to accept the memo of compromise.

8. Recording the memo of compromise, these Criminal Original Petitions are allowed and the proceeding in Crime No.634 of 2013 on the file of the first respondent and P.R.C.No.16 of 2014 on the file of learned Judicial Magistrate, Sivakasi shall stand quashed.

Sd/-

Assistant Registrar(Per.Admn)

/True Copy/

Sub-Assistant Registrar

To

(*)MEMO OF COMPROMISE XEROX COPIES ARE ENCLOSED HEREWITH

1.THE JUDICIAL MAGISTRATE, SIVAKASI

2. THE INSPECTOR OF POLICE,

SIVAKASI EAST POLICE STATION, VIRUDHUNAGAR DISTRICT.

2. THE DEPUTY SUPERINTENDENT OF POLICE, SIVAKASI,
VIRUDHUNAGAR DISTRICT.

4.THE ADDITIONAL PUBLIC PROSECUTOR,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+One cc to Mr.R.Rajamohan, Advocate, SR.No.9086

rj2

RL/6 c- 26/6/2015

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