

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3470 of 2014

Arising Out of PS.Case No. -267 Year- 2012 Thana -SHRIKRISHNAPURI District- PATNA

Sunil Kumar Tiwary, Son of Late Rameshwar Tiwary, Resident of Kalyani Cooperative, Beur, Police Station - Phulwarisharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mamta Kumari, Wife of Navneet Kumar, Resident of Flat No. 505, Vaishnavi Plaza Apartment, West Boring Canal Road, Police Station - Srikrishnapuri, District- Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate

For the Opposite Party/s : Mr. Mayanand Jha, APP

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

Date: 29-11-2016

Heard learned counsel for the petitioner and learned APP for the State. Learned counsel for opposite party no. 2 has not appeared.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short the Cr.P.C.) for quashing of the First Information Report of Sri Krishnapuri P.S. Case No. 267/12 in a case registered for the offences punishable under Sections 420, 406, 467 and 468 of the Indian Penal Code.

3. The accusation of the informant Mamta Kumari (opposite party no. 2) is that the petitioner disclosed himself to be a



builder constructing an apartment known as Shivam Vihar Apartment and husband of the informant agreed to purchase flat No. 403 for a consideration money of Rs. 12 lakhs. An agreement was prepared on 15.04.2011 and Rs. 1 lac was paid as advance. Opposite party no. 2 further stated that a sum of Rs. 3 lakhs was again paid on two different dates and has paid a total sum of Rs. 7 lakhs for transfer of the said flat but possession has not yet been given.

4. Learned counsel for the petitioner submits that now the dispute has been resolved between the parties and has filed a supplementary affidavit enclosing the joint compromise petition by petitioner and opposite party no. 2 filed before the Judicial Magistrate 1st Class, Patna in Sri Krishnapuri P.S. Case No. 267/12, G.R. No. 5764/12 that matter has been finally compromised outside the Court without any duress, threat, coercion or undue influence. The said compromise petition is part of Annexure-3 of the supplementary affidavit filed by the petitioner on which both petitioner and opposite party no. 2 have put their signature on 23.02.2015.

5. Learned APP for the State has submitted that since the parties have amicably settled the dispute outside the Court, the State has no objection if the criminal prosecution is set aside.

6. Having heard the parties and perused the record, I find that although the offences punishable under Sections

406 and 420 of the Indian Penal Code are compoundable, offences punishable under Sections 467 and 468 of the Indian Penal Code are non-compoundable.

7. The Apex Court in the case of **Gian Singh Vs. State of Punjab** since reported in **(2012)10 SCC 302** has explained the difference between Section 320 and Section 482 of the Cr.P.C. in the following manner in paragraphs 57 and 59 as under :

“57. 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.

xxxx xxxx xxxx

59. *B.S. Joshi [(2003) 4 SCC 675], Nikhil Merchant [(2008) 9 SCC 677], Manoj Sharma [(2008) 16 SCC 1] and Shiji [(2011) 10 SCC 705] do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.”*

Thereafter, the Court answered the reference made to it in paragraphs 61 to 62 in the following words :

“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 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 offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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 criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

62. In view of the above, it cannot be said that B.S. Joshi [(2003) 4 SCC 675], Nikhil Merchant [(2008) 9 SCC 677] and Manoj Sharma [(2008) 16 SCC 1] were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench(es) concerned.”

8. After considering the law laid down by the Supreme Court in the case of **Gyan Singh**(supra) it is amply clear that even if the offences are non-compoundable (in the present case allegation under Sections 467, 468 are not compoundable) if they relate to financial matters and the Court is satisfied that the parties have settled the same amicably and without any pressure, Section 320 of the Cr.P.C. would not be a bar to the exercise of powers of quashing of the First Information Report, complaint or subsequent criminal proceedings.

9. Reverting back to the facts and circumstances of the present case, it will be evident that the parties have decided to bury all the controversies by way of an out of Court settlement. Consequently and keeping in mind the decision of the Supreme Court hereinabove, I am of the view that allowing the further proceeding to continue in the court of the Magistrate in case of the petitioner may lead to insurmountable harassment, agony and pain not only to the accused, but also to the informant/ opposite party no. 2. The present dispute does not involve any public policy and is a private dispute between the parties.

10. Accordingly, in view of the joint compromise petition by the petitioner and opposite party no. 2 filed before the Court below, the entire prosecution arising out of Sri Krishnapuri P.S. Case No. 267/12, pending in the court of Judicial Magistrate, 1st Class, Patna is quashed.

11. This application is, accordingly, allowed.

(Nilu Agrawal, J.)

Rajesh/-

AFR/NAFR	AFR
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