

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 485 OF 2016

1. Samelal Diwaker S/o late Dukhram Diwaker, Aged about 54 years, R/o Gangajal, Police Station Nawagarh, Distt. Janjgir Champa (CG).
2. Rohit Chawra (wrongly mentioned in order impugned as "Rohit Chawla") S/o late Suresh Chawra, Aged about 44 years, R/o Bastar Bada, Jail Road, Fafadih Chowk, Raipur, Police Station Fafadih, Distt. Raipur (CG).
3. Loknath Barik, S/o Harishchand Barik, Aged about 45 years, R/o Quarter No. 1218, Dumar Kachhar, Police Station Kotma, Distt. Anuppur (MP).
4. Ghanaram Sahu, S/o Suddhu Ram Sahu, Aged about 42 years, R/o Ward No.10, Behilnd Govt. Hospital, Beside Ramganesh Ji House, Bijuri, Tahsil and Police Station Kotma, Distt. Anuppur (MP).
5. Pradeep Kumar Choudhary S/o Birbal Choudhary, Aged about 35 years, R/o Railway Fatak Road, Bijuri, Ward No.10, Tahsil and Police Station Kotma, Distt. Anuppur (MP).
6. Mohammad Mahfuz Alam, S/o Mohammad Dargahi, aged about 38 years, R/o New Colony, Chouraghat, Jhimar Colliery, Qt. No. 41, Police Station and Tahsil Kotma, Distt. Anuppur (MP).
7. Archana Singh D/o Suryabhan Singh, Aged about 33 years, R/o Qt. No.MQ.189 Chouraghat Colony, Post Jhimar Colliery, Police Station and Tahsil Kotma, Distt. Anuppur (MP).

... Petitioners

Versus

1. State of Chhattisgarh Through Station House Officer, Police Station Nawagarh, Civil and Revenue District Janjgir Champa (CG).
2. Gitaram Baghel S/o Ramdayal Baghel, Aged about 50 years.
3. Smt. Dujbai Khandekar, W/o Shri Manaram Khandekar, Aged about 55 years.
4. Duleshwari Bai W/o Jaitram, Aged about 28 years.
5. Basauram S/o Shri Manaram, Aged about 52 years.
6. Manaram, S/o Phoolchand, Aged about 60 years.
7. Badriprasad S/o Mahettar Ram, Aged about 42 years.
8. Smt. Laxminbai, W/o Shri Laxmi Prasad, Aged about 30 years.

9. Smt. Mongrabai W/o Basat Ram, Aged about 50 years.
10. Manoj Kumar Banjare, S/o Panaram, Aged about 35 years.
11. Nakul Prasad, S/o Panaram, Aged about 44 years.

All R/o Village Kirit, Tahsil Nawagarh, Distt. Janjgir Champa (CG).

... Respondents

For Petitioners	:	Smt. Fouzia Mirza, Advocate.
For Respondent/State	:	Shri Satish Gupta, Govt. Advocate.
For respondent/Complainant	:	Shri Akash Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

Reserved on 26/08/2016

Delivered on 02/09/2016

1. The present petition has been preferred invoking the provisions of Section 482 CrPC seeking relief of firstly quashment of order dated 19.10.2015 passed by the Judicial Magistrate First Class, Nawagarh, Distt. Janjgir Champa in Criminal Case No. 352 of 2015 and secondly; for the quashment of entire criminal proceedings initiated against the petitioners in Crime No.231 of 2014 registered at Police Station, Nawagarh, which has subsequently been put to trial in Criminal Case No.352 of 2015 pending before the JMFC, Nawagarh, District Janjgir Champa.
2. Facts in nutshell necessary for adjudication of this petition are that one Gitaram Baghel lodged a complaint before the police authorities intimating that the petitioners together had floated a company in the name and style of Super India Marketing Pvt. Ltd. It is said that giving large hopes of great returns on the investment to be made in the said

company, the respondents are stated to have collected huge amount of money from the large number of villagers for and on behalf of the company. The said complaint was registered as Crime No.231/2014.

3. After investigation, the petitioners herein were all arrayed as accused persons in the First Information Report. The petitioner No.1-Samelal Diwaker, one of the accused, was said to be an agent on behalf of the company. It is stated that subsequently when the said complainant inquired from the Bank authorities, he was informed that there was no such company operating in the area. Doubting the credibility of the company, the complainant went for withdrawal of his money which he had given to petitioner No.1-Samelal, an agent of the company. The petitioner No.1 tried to avoid releasing of the payment on some pretext or the other and finally said that he too is not aware as to who is the actual owner of the company and that he too has been kept in dark, and therefore, the petitioner No.1-Samelal found it difficult in making the repayment to the complainants.
4. In the course of investigation, it was only the petitioner No.1-Samelal who could be arrested though the charge sheet was duly filed against all the petitioners and thus, the court below proceeded for framing of charge only against the petitioner No.1-Samelal as it was only he could be arrested and others have been avoiding of the arrest. In the course of investigation, the statement in respect of 16 persons were recorded who have made categoric statement complaining before the police authorities of they being cheated by the company after taking money from them, those 16 persons are as under :

- i. Dujbai Khandekar
- ii. Fulwa Bai
- iii. Gitaram Baghel
- iv. Basau Ram
- v. Manaram S/o Fulchand
- vi. Badri Prasad Kurre
- vii. Laxmin Bai
- viii. Mongra Bai
- ix. Duleshwari Bai
- x. Manoj Kumar Banjare
- xi. Nakul Prasad Banjare
- xii. Laxmi Prasad
- xiii. Smt. Shakuntala Bai
- xiv. Smt. Sukhbai
- xv. Shatruhan Lal Chauhan &
- xvi. Gopal Krishna Kashyap.

5. Pending the case before the JMFC, Nawagarh, the complainants is said to have moved an application under Section 320(2) Cr.P.C. seeking permission from the court for compounding the offence. On perusal of record, it appears that only 7 complainants have moved the said application seeking permission for compounding the offence. Those, seven complainants are as under :

- i. Gitaram Baghel
- ii. Basau Ram
- iii. Manaram S/o Fulchand
- iv. Sukhbai
- v. Mongra Bai
- vi. Dujbai and
- vii. Duleshwari

6. It is pertinent to mention that it is only these seven complainants who had moved the application seeking for permission of the court to compromise and no such application were initiated at the behest of the petitioners/accused persons before the trial court and the trial court vide its impugned order dated 19.10.2015 rejected the same for the simple reason that permission in such a case cannot be granted where except for one Samelal, all the other accused persons are absconding.
7. Subsequent to the order dated 19.10.2015, the petitioners herein, who are the accused persons before the trial court, have filed the instant petition invoking the inherent jurisdiction of this court under Section 482 Cr.P.C. seeking for firstly quashment of the order dated 19.10.2015 whereby the court below had rejected the application moved by the complainants and secondly for quashment of the entire criminal case itself on the basis of compromise and also the further proceedings in Crime No.231 of 2014 registered at Police Station, Nawagarh.
8. Learned counsel for the petitioners relies upon the various decisions of Supreme Court passed in recent past in cases of Gold Quest International Private Limited Vs. State of Tamil Nadu & Others, reported in 2014(15)SCC 235, Padmalayan & Another Vs. Sarasan & Another, reported in 2014(13)SCC 798, Central Bureau of Investigation, ACB, Mumbai Vs. Narendra Lal Jain and Others, reported in 2014(5)SCC 364, Gian Singh Vs. State of Punjab & Another, reported in 2012(10) SCC 303, Shiji @ Pappu and Others

Vs. Radhika and Another, reported in 2011(10)SCC 705, Raja Ram Kashyap & Others Vs. State of Uttar Pradesh & Another, reported in 2009(14)SCC 248, Nikhil Merchant Vs. Central Bureau of Investigation & Another, reported in 2008(9)SCC 677 and Madan Mohan Abbot Vs. State of Punjab, reported in 2008(4)SCC 582. In addition, reliance is also placed in judgment of Punjab & Haryana High Court in case of Parminder Singh @ Sherry Vs. State of Punjab & Another (decided on 10.05.2012 in Crm.No. M10142 of 2012). On the basis of principles and ratio of law laid down in the aforesaid cases, counsel of the petitioners stressed hard on the fact that no fruitful purpose would now be served in subjecting the petitioners to undergo the trial when the complainants themselves are not interested in further prosecution of the petitioners and want the matter to be closed once for all.

9. Counsel for the petitioners tried to emphasize on the fact that in the given factual circumstances of the case the possibility of conviction of the petitioners is very bleak and remote and it would be entirely futile exercise and would also be a waste of time, energy and money of the court and also the abuse of judicial process. It is also tried to emphasize before the court that taking into consideration the nature of the offence it cannot be said to be one which is a heinous crime or a crime which has serious implications on the society. It is primarily a dispute between two persons, one who has invested and the other who has defrauded the investor. Thus, prayed that the parties may be

permitted to compromise and compound the offence and the entire criminal proceedings initiated against the petitioners may be quashed.

10. On the other hand, learned counsel appearing for the State vehemently opposes the petition on the ground that firstly the petitioners cannot be permitted to enter into compromise/settlement when they are not cooperating with the investigating agency as also with the court below as all the accused persons except for petitioner No.1-Samelal, are absconding. Secondly; the report does not show that all the complainants have entered into a compromise with the accused persons as in the course of investigation, as is reflected from the charge sheet, about 16 persons came up before the investigating agency and stated to have been cheated by the petitioner's company, whereas, before the trial court only seven persons have moved application for compromise, that means, at that point of time also about nine persons had not compromised the matter with the petitioner's company. It is further submitted that even in the present petition also the petitioners have not filed affidavits of 16 persons, but have only been able to obtain the affidavits of only 10 persons out of 16. Thus, in the given factual matrix of the case, state counsel has prayed for rejection of the petition.
11. Counsel for the State has relied upon the decisions rendered by the Supreme Court in cases of Gian Singh v. State of Punjab & Another [2012 (10) SCC 303] and also in the case of Narinder Singh & Others v. State of Punjab & Another [2014 (6) SCC 466]. Drawing attention of the court on the principles and ratio of law laid down in these cases,

it is submitted by the State counsel that the court should be more cautious while permitting the parties to compound the offence which would fall within the ambit of being crime against society and which cannot be said pre-dominantly a private dispute.

12. Having considered the submissions put forth by the counsel for the petitioners as well as the State, this court is of the opinion that so far as law as regards to compounding of offence with leave of the court as also the quashment of entire criminal proceeding invoking the provisions of Section 482 Cr.P.C. is concerned, the Supreme Court in the recent past, particularly in the judgments referred to by the counsel for the petitioners as well as the State in the preceding paragraphs, has held that the High Court can exercise its power under Section 482 Cr.P.C. and quash the entire criminal proceedings and can also in a given case can grant permission for compounding the offence. Accordingly, this court has no hesitation to reach to the conclusion that the facts of the case would definitely be one which could be compounded with the leave of the court.
13. True it is that the offence under Section 420/34 IPC which has been registered against the petitioners in the present case is a compoundable offence with the leave of the court, however, if we take into consideration the nature of allegation and offence said to have been committed by the petitioners, in the opinion of this court it would not fall in those cases which have been made an exception for not granting of permission to compound as well as quashment of the criminal proceeding. It is infact a case in which permission can be

granted for compounding the offence as well as for quashment of criminal proceeding.

14. However, if we look into the facts of the present case, what is clearly reflected is the fact that charge sheet has been filed mentioning all the petitioners as an accused and in the charge sheet except for the petitioner No.1-Samelal, all the other persons have been shown as absconder. The said proceedings of filing of charge sheet showing the petitioners No.2 to 7 as absconders have not been questioned or challenged by the petitioners before any court of law. The trial court is proceeding with the case only against the petitioner No.1-Samelal as it was only he who could have arrested.
15. Another aspect of the matter which has to be borne in mind is the fact that the petitioners-accused persons have not moved any application before the trial court seeking permission for compromise and for compounding the offence. On the contrary, it is some of the complainants who had approached the court below seeking permission to compound the offence. It is also necessary to mention that the complainants who had moved before the trial court seeking for permission to compound the offence have not approached the High Court challenging the order dated 19.10.2015 whereby their application was rejected. The present petition has been filed by the petitioners who have never approached the trial court seeking for compounding of offence. In another way, the present petition has been preferred questioning the order dated 19.10.2015 not by the persons who had moved the application before the trial court and

whose application stood rejected, but by the persons who neither appeared before the trial court nor had they moved any application before the trial court for compounding the offence.

16. Last but not the least, even in the present petition the affidavits for compounding of the offence or for that matter application for compounding has been filed only on behalf of 10 persons out of 16 which would further reflect that till date the compromise with all the complainants have not yet arrived at. That only on the basis of alleged compromise entered into with 10 persons, the petitioners want the entire prosecution initiated against the petitioners to be quashed, which, in the opinion of this court would lead to great miscarriage of justice.
17. Thus, firstly the petitioners have not submitted themselves before the concerned authorities as required under the law and are absconding evading their arrest as also the process of law which otherwise is required, secondly; the compromise not having been entered into between all the complainants whom the petitioners have cheated; thirdly, the petitioners themselves having not moved application before the court below seeking permission to compound the offence; fourthly the petitioners No.4 to 7 not having moved any application before the trial court cannot be permitted to question the order dated 19.10.2015 and fifthly, both before the trial court as well as before the High Court it reflects that the compromise has not been entered into between all the 16 complainants.

18. For the foregoing reasons, this court is of the opinion that it is not a fit case wherein this court exercising its discretionary inherent power under Section 482 Cr.P.C. can permit the petitioners for quashing of the entire criminal case itself pending before the JMFC, Nawagarh, District Janjgir Champa.
19. Thus, the present petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

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