

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-34590 of 2015.
Decided on:-25.07.2016.

Rajiv Sood and another

.....Petitioners.

Versus

State of U.T., Chandigarh and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. P.S. Ahluwalia, Advocate for the petitioners.

Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, APP, U.T., Chandigarh.

HARI PAL VERMA, J.

Petitioners, namely, Rajiv Sood son of G.C. Sood and Anand Sharma son of late Rattan Chand Sharma have approached this Court by way of present petition under Section 482 Cr.PC praying for setting aside of criminal complaint No.1308 dated 15.2.2007 filed at the instance of respondent No.2-complainant Rajinder Katoch son of late Rai Bahadur Bainsi Chand Katoch. The copy of complaint has been annexed as Annexure P-1.

Pursuant to the institution of the aforesaid complaint, preliminary evidence was led by the complainant. On the basis of such evidence, summoning of the petitioners and their co-accused Gautam Katoch for offence under Sections 467, 468, 471 and 420 read with Section 120-B IPC was issued. The dispute has emerged between the parties primarily on the issue of a Will dated 4.9.1999 left behind by Smt. Parvati Katoch, who was mother of the complainant as well as co-accused. She had died on

25.1.2000. The precise grievance of the respondent No.2-complainant is that on account of the Will, he has been deprived of his 1/7th share in the property, left behind by his mother Smt. Parvati Katoch as the same has been bequeathed to the children of Gautam Katoch on the basis of the Will.

During pendency of the complaint, co-accused of the petitioner, namely, Gautam Katoch (accused No.1 in the complaint) had died and accordingly, proceedings were abated qua him vide order dated 31.10.2012 passed by learned Judicial Magistrate 1st Class, Chandigarh. The petitioners were charge-sheeted by learned trial Court for offence under Sections 465, 467 and 468 read with Section 120-B IPC as they were the attesting witnesses of the Will executed by Smt. Parvati Katoch.

Learned counsel for the petitioners has submitted that in the complaint filed before learned Magistrate, the parties have amicably resolved their dispute and respondent No.2-complainant has inherited the property on the basis of his share as is entitled to in terms of law of natural succession. An oral compromise had been arrived at between the parties that it would be in the fitness of things to amicably resolve the dispute. The respondent No.2 has suffered a statement before the trial Court that he want to withdraw the complaint, but learned Magistrate has declined withdrawal of the complaint on the premises that the case has been fixed for recording statements of the accused under Section 313 Cr.PC. Learned Magistrate has further observed that though it was a private complaint, but since the accused (petitioners herein) were summoned under Sections 467, 468, 471 and 120-B IPC, these offences are not compoundable and the Court has

already taken cognizance by summoning the accused followed by charge-sheet served upon them. Learned Magistrate has further observed that this fact does not make difference whether the complainant want to pursue the present complaint or not. He has further submitted that these observations of learned Magistrate runs contrary to the mandate of law.

In support of his contentions, learned counsel for the petitioners has placed reliance upon the judgment of Hon'ble Orissa High Court in ***Pyarimohan Mohapatra Versus State of Orissa and others 2009(77) AIC 629*** to contend that if the complainant wants to withdraw the complaint on the basis of compromise, continuance of such proceedings shall be a mere abuse of the process of the Court and the Magistrate is under a legal obligation to drop the complaint case. He has submitted that in view of the fact that the matter has been compromised between the parties, the criminal proceedings were unlikely to succeed and should be quashed as continuance thereof would be a futile exercise.

I have heard learned counsel for the parties.

Pursuant to the notice of motion issued by this Court vide order dated 9.10.2015, respondent No.2-complainant Rajinder Katoch appeared in person before this Court on 10.12.2015. On that date, the following order was passed by this Court:

“Respondent No.2 Rajinder Katoch, who is present in person in the Court and duly identified by petitioner No.1 Rajiv Sood, submits that he is ready to withdraw the complaint.

List on 10.3.2016.

Interim order to continue.”

Perusal of the aforesaid order reveals that there is no dispute that the matter has been settled between the parties amicably and the complainant does not want to proceed with the case. The allegation against the petitioners was that they were marginal witnesses in the Will executed by Smt. Parvati Katoch. But once the matter has been decided by the civil Court and pursuant thereto, the parties have been held entitled to their respective shares followed by withdrawal of the complaint by the complainant, this Court finds that no fruitful purpose would be served by allowing the proceedings to continue any further. The continuance of such proceedings before the trial Court shall be an abuse of the process of the Court.

Therefore, having recourse to the provisions of Section 482 Cr.PC, this Court finds that prayer made in the present petition deserves to be accepted. Accordingly, in order to secure the ends of justice, the present petition is allowed and the impugned order dated 7.9.2015 passed by learned Judicial Magistrate 1st Class, Chandigarh is set aside. The respondent No.2-complainant is permitted to withdraw the complaint and the trial Court is directed to drop the complaint case.

July 25, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No