

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.48 OF 2017

Chabilal K.C.
Son of Thaman K.C.
Major in age,
Nepali National
r/o Near Ideal High School,
Taligao, Tiswadi – Goa.

... Petitioner

Versus

1. State of Goa,
Through the Public
Prosecutor, High Court,
Panaji, Goa.
2. The Police Inspector,
Panaji Police Station,
Dist – North Goa, Goa.
3. Dr. Kotagiri S. Rao,
Son of Mr. S. Rao
3/S-1, Kamat Kinara,
Miramar – Goa.

... Respondents.

Shri V. Amonkar, Advocate for the petitioner.

Shri P. Faldessai, Additional Public Prosecutor for the respondents no. 1 and 2.

Shri N. Pai, Advocate for the respondent no.3.

**CORAM : F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 10th April, 2017.

ORAL JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Shri V. Amonkar, learned Advocate for the

petitioner, Shri P. Faldessai, learned Additional Public Prosecutor waives service for the respondents no.1 and 2 and Shri N. Pai, learned Advocate for the respondent no.3.

2. Rule.

3. Heard forthwith with the consent of the learned Advocates appearing for the respective parties. Shri P. Faldessai, learned Additional Public Prosecutor waives service for the respondents no.1 and 2 and Shri N. Pai, learned Advocate waives service for the respondent no.3. Heard finally by consent of the parties.

4. The petitioner has sought for the quashing of the Chargesheet bearing no.131 of 2014 in the Criminal Case No. IPC/272/2014/B pending before the J.M.F.C., Panaji on the ground that he had made a representation to the respondent no.3 to amicably resolve the dispute which is the subject matter of the said Criminal Case. The respondent no.3 had acceded to the request made by the petitioner and agreed to withdraw the prosecution in the Criminal Case. They had made a joint request before the J.M.F.C. to defer the hearing of the case as they were proposing to approach this Hon'ble Court as

the offence under Section 380 of I.P.C. was not compoundable. The petitioner therefore invoked the inherent powers of this Court under Section 482 of Cr. P.C. The petitioner was arrested on 19th September, 2013 for the commission of the alleged offence under Section 380 of I.P.C. and his wife was also arrayed as the second accused before the J.M.F.C. but she was subsequently discharged by the order dated 23rd November, 2016 of the J.M.F.C.

5. The prosecution against him was that the petitioner on 17th September, 2013 between 10.30hrs to 11.30hrs committed the theft of a Black Color Samsung Mobile Phone having IMEI No.35846/04/310621/9 bearing SIM Card for the Number 9420596660 worth ₹3,500/- belonging to the respondent no.3 and accordingly Chargesheet was filed against him alongwith his wife who had soon been discharged from the proceedings. The complaint was an outcome of the misunderstanding between the petitioner and the respondent no.3 and in order to resolve the dispute the petitioner had approached the respondent no.3 and accordingly he had acceded to his request. The present petition was filed to quash the F.I.R. and the Chargesheet and as they had finally settled

their dispute and wanted to maintain good and healthy relations between themselves.

6. The respondent no.3 filed his affidavit reiterating that he had no objection for quashing of the Chargesheet filed against the petitioner since the petitioner had approached him and represented that the complaint and consequent proceedings were on account of the misunderstanding which had arisen between them. He had no grievance against the petitioner and as such was not desirous of continuing the criminal proceedings against him.

7. We have heard Shri V. Amonkar, learned Advocate for the petitioner, Shri P. Faldessai, learned Additional Public Prosecutor for the respondents no.1 and 2 and Shri N. Pai, learned Advocate for the respondent no.3 and besides perused the contents of the affidavit. Moreover, the offence as set out in the petition does not fall within the category of serious or heinous crime such as rape, murder, dacoity etc. or that involving any depravity of the mind. We have considered the law laid down by the Hon'ble Apex Court in "**Gian Singh v/s. State of Punjab and another**" [(2012) 10 SCC 303] and that

in “**Yogendra Yadav and others Vs. State of Jharkhand and another**” [(2014)9 SCC 653].

8. **Yogendra Yadav** (supra), considered the question whether the quashing of non-compoundable offences in view of the compromise between the parties could be permitted in exercise of the powers under Section 482 of Cr. P C. Their Lordships held that the High Court can quash a criminal proceeding in exercise of its discretion any power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. Further this would depend on the facts and circumstances of each case. Offences which involve moral turpitude, grave offences like, rape, murder etc cannot be effaced by quashing the proceedings because they will have harmful effect on the society. Such offences cannot be said to be restricted to two individual or two groups. If such offences are quashed, it may send a wrong signal to the society. However, when the High Court was convinced that the offences are entirely personal in nature and therefore, do not affect

public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure the ends of justice, it may quash the same. In such cases, the prosecution become a lame prosecution and pursuing such lame prosecution becomes a waste of time and energy and also likely to unsettle the compromise and obstruct the restoration of peace. On the facts it was held that though offences under Sections 326 and 307 are non-compoundable, but considering the compromise petition filed by the parties in the lower Court and the fact that they were neighbours and that there was harmonious relationship between the two sides and that they were living peacefully, the pending proceedings were directed to be quashed.

9. In **Gian Singh** (supra), the Apex Court had observed at paragraph 58 that:

Paragraph 58:- where the High Court quashes a criminal proceedings having regard to the fact that the dispute between the offender and the victim is not settled although the offences are

not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

10. Considering the law laid down by the Hon'ble Apex Court in **Gian Singh** and **Yogendra Yadav** (supra), therefore, we deem it appropriate in the circumstances of the case that it is a fit case to quash the proceedings as otherwise it would result in undue wastage of Court time and no purpose would be achieved by the continuance of the proceedings when the parties have otherwise amicably resolved the dispute between themselves which had arisen on account of some misunderstanding between them. Hence, we pass the following :

ORDER

(i) The petition is allowed whereby the Chargesheet bearing no.131 of 2014 and the Criminal Case No. IPC/272/2014/B pending before the J.M.F.C., Panaji is

quashed and set aside.

(ii) Rule is made absolute.

(iii) The petition stands disposed off accordingly.

NUTAN D. SARDESSAI,J.

F. M. REIS,J.

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