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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
WRIT PETITION NO.335 OF 2017

Kumar @ Appaso Kallappa Kumasage ...Petitioner
vs.
The State of Maharashtra & Anr. ...Respondents

Mr.Kuldeep Nikam for the Petitioner
Dr.F.R.Shaikh, APP for the respondent No.1
Mr.Shriram S. Chaudhari a/w Mr.Vaibhav Gaikwad for
respondent No.2

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 8, 2017

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 The submissions of the learned counsel appearing for the parties were heard on the earlier date. The prayer in this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure,1973 (for short Cr.P.C.) is for quashing the FIR registered at the instance of the second respondent for the offence punishable under sections 392, 323, 324, 506 read with section 34 of the Indian Penal Code as well as sections 33 and 34 of the Maharashtra Money Lenders Act,2014 and section 3 read with section 25 of the Arms Act.

2 In the statement of the second respondent who is the first informant, it is stated that on 12th August 2014 he had borrowed a sum of Rs.3,00,000/- from the petitioner (who is shown as accused) for his hotel business. It is alleged that while paying

the sum of Rs.3,00,000/-, the second respondent deducted a sum of Rs.15,000/- and paid him a sum of Rs.2,85,000/-. It is alleged that the signatures of the second respondent were obtained by the petitioner on two blank cheques and two blank receipts. It is alleged that towards principle amount and interest, the second respondent paid a sum of Rs.6,85,000/- to the petitioner. It is alleged that the petitioner was demanding a sum of Rs.5,00,000/- in addition to aforesaid amount.

3 The alleged incident occurred at 11.00 p.m on 30th November 2016. It is stated that at that time, the petitioner and two unknown persons visited the house of the second respondent. The second respondent was asked to accompany them. He was made to sit in white coloured safari car. It is alleged that the petitioner started asking the second respondent as to when the amount will be paid by him. He started assaulting the second respondent. The vehicle was stopped near Ratna Hotel and the petitioner took the second respondent to open space behind the said hotel. It is alleged that the petitioner assaulted him by his hand and by a stick when he fell down. The allegation is that the petitioner took a gun and at the gunpoint, he threatened the second respondent that he would be killed if the money was not paid. The allegation of the second respondent is that cash in the sum of Rs.10,000/- carried by him and a gold chain weighing 15 gms was snatched by the petitioner. Thereafter, the second respondent was taken to his

home and in presence of his wife, the petitioner gave a threat to him that if a sum of Rs.5,00,000/- was not paid to him by Sunday, he would kill the second respondent, his wife and his son. FIR about the alleged incident was lodged on the very next day on (1st December 2016).

4 The prayer in this petition is for quashing the FIR on the ground of settlement. It will be necessary to make a reference to affidavit dated 2nd February 2017 filed by the second respondent recording his no objection for quashing the FIR. Paragraphs 4 to 6 of the said affidavit read thus:

"4 I say that the said FIR was filed by me against the Petitioner solely due to my misunderstanding against the Petitioner. I say that due to the financial crunches and due to the repeated request for repayment from the Petitioner, I was mentally disturbed and in such circumstances, and in a complete misunderstanding I filed the said FIR against the Petitioner. I say that I had paid the amount of Rs.2,85,000/- (which is mentioned in the present FIR) to the Petitioner prior to filing of the FIR and the Petitioner in-turn had accordingly returned the cheques, stamp paper and receipts (as mentioned in the said FIR) to me. I say that I have recently realised that apart from the said Rs.2,85,000/-, I also owed an approximate amount of Rs.2 lakhs which I had

borrowed from the petitioner from time to time, prior to the said friendly loan of Rs.2,85,000/-, during my financial crunches and I have also realised that the Petitioner was frequently requesting for the said outstanding amount and not in respect of the aforesaid Rs.2,85,000/- which is mentioned in the FIR.

5 I say that in fact the amount of Rs.10,000/- and the gold chain as mentioned in the present FIR was found immediately on the next day of filing the present complaint at my own residence. I say that as stated above due to the friendly relations of the Petitioner and myself after realizing the said misunderstanding, the Petitioner has decided to exempt me from paying the said amount to him with an intention to regain and re-live the friendly relations between us. In such circumstances, all the financial transactions between the Petitioner and myself are mutually settled and closed.

6 I say that during the investigation my statement u/s 164 of the Cr.P.C was also recorded by the concerned Magistrate wherein also I have duly stated that the said FIR is lodged purely because of my misunderstanding against the petitioner."

5 On plain reading of the statements made in

paragraphs 4 and 5, it is apparent that the second respondent has taken a somersault and has come out with a case which is totally contrary to the statement recorded by the police on the basis of which the impugned FIR was registered. Now, he claims that the blank cheques and blank receipts were returned to him prior to filing of the FIR. Now, the second respondent claims that in addition to Rs.2,85,000/-, he has borrowed a sum of Rs.2,00,000/- from the petitioner, and in fact, a demand was made by the petitioner in respect of the said amount.

6 Accepting the statements made in the affidavit as it is, it is apparent that the second respondent has not come out with a case of any settlement. Now, he wants to come before the Court and state that the FIR was registered by him solely due to misunderstanding with the petitioner.

7 The Apex Court has repeatedly held that under section 482 of the Cr.P.C, this Court has a power to quash FIR in a non compoundable case on the ground of settlement. Leading decision of the Apex Court on the said aspect is in the case Gian Singh vs. State of Punjab and another¹. In the said decision, the Apex Court has considered all its earlier decisions on the point. It will be necessary to make a reference to paragraphs 57 and 58 of the said decision which read thus:

1 (2012) 10 SCC 303

"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 offence 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 proceedings 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.

58 Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been 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. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the

High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

(underline supplied)

8 Paragraph 58 deals with the power of this Court of quashing the proceedings on the ground that the dispute between the offender and the victim has been settled though the offence is not compoundable. The Apex Court observed that in case of crimes which have harmful effect on the public and consists of wrong doing that seriously endangers and threatens the well being of the society, it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation. In paragraph 59, the Apex Court held that powers under section 320 and section 482 are separate and distinct. In paragraph 61, the Apex Court held thus:

"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 planitude 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 FIR may be exercised where the offender and the 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, decoity, 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the

ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question (s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

(underline supplied)

9 Paragraph 61 deals with the case where there is compromise between the offender of the victim.

10 We may also make a useful reference to another decision of the Apex Court in case of State of Rajasthan vs. Shambhu Kewat and another². This was a case where the Sessions Court had convicted accused for an offence punishable under section 307 read with section 34 of the Indian Penal Code. They were sentenced to undergo R.I for 10 years. In an appeal against the order of conviction, it was pointed out that the accused have entered into compromise with the complainant. On the basis of the compromise, appeal was allowed. The observations made by the Apex Court are in the context of the factual scenario before it. Ultimately, the Apex Court by setting aside the order in the Appeal passed by the High Court remanded the appeal for reconsideration. What is material is paragraph 15 of the said decision which reads thus:

2 (2014) 4 SCC page 149

"15 We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why section 307 IPC is held to be non-compoundable, is because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant just to protect the individual but the society as a whole. The High Court was not right in thinking that it was only an injury to the person and since the accused persons (sic victims) had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on the serious offence like the present, will leave a wrong impression about the criminal justice system and will

encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large."

(underline supplied)

11 The Apex Court specifically observed that the High Court was not right in thinking that it was only an injury to the person and since the victims have received monetary compensation, crime against them is wiped out. The Apex Court observed that money would not be a substitute for crime against the society.

12 Thus, when jurisdiction of this Court is invoked under section 482 of the Cr.P.C for quashing the FIR on the ground of settlement, firstly, this Court must be satisfied that there is a settlement between the alleged wrong doer and the victims of the alleged offence. It goes without saying that the settlement must be of a dispute which is the root cause of the alleged crime. Needless to add that the settlement must be a lawful settlement within the four corners of law. Only if the Court is satisfied that there is such a settlement, the Court will have to consider whether the case satisfies the tests laid down in paragraph 61 of the decision of Apex Court in the case of Gian Singh.

13 In case of a serious crime which can be said to be a crime against the society at large or in case of a heinous crime, the power under section 482 of

the Cr.P.C cannot be exercised, even in case of a settlement between the victims and the offenders, in view of what is held in paragraph 61 of the decision of the Apex Court in the case of Gian Singh.

14 By no stretch of imagination, the power under section 482 can be exercised in a case when the first informant comes out with a case which is completely contrary to the case made out in the FIR. When the first informant comes out with a case that due to misunderstanding or due to fact that he or she was under a mental tension that he registered FIR, the power of this Court under section 482 cannot be exercised. The reasons are twofold. The first is that the power of this Court under section 482 cannot be exercised to encourage the first informant to back out from his or her version. The second reason is that exercising the power of quashing on the basis of such a stand taken by the first informant will be completely contrary to the legislative intent of conferring an inherent power in this Court. In the present case, it is not the case of the second respondent that his statement on the basis of which the impugned FIR was registered was incorrectly recorded. He is saying that he filed FIR due to "misunderstanding". He has made statement in the affidavit filed in Court which are completely contrary to his version in the statement recorded by the police. The act of taking such stand on oath is dishonest and is itself an abuse of process of law.

15 Merely because the first informant has changed his mind and merely because the first informant states that he is no longer interested in continuation of proceedings, it cannot be inferred that there is lawful settlement between the accused and the first informant as well as the victims of the offence. In this case settlement is neither pleaded nor placed on record. In such circumstances, the power under section 482 cannot be exercised. The law is very well settled. The power under section 482 has to be exercised very sparingly to secure ends of justice or to prevent abuse of process of law.

16 The present case falls in this category where the first informant by filing an affidavit has taken a somersault and has come out with a case which is completely different from his statement recorded by police. The affidavit of the second respondent does not spell out any lawful settlement.

17 Hence, no case is made out for exercising jurisdiction of this Court under section 482 of the Cr.P.C.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)