

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.7428 of 2017

M.Ponnusamy

..Petitioner

Vs

1. The State of Tamil Nadu
Rep.by the Inspector of Police
B-12, Ukkadam Police Station
Coimbatore

2. Mohammed Ayub

..Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to S.C.No.71 of 2015 on the file of the learned Principal Sub Judge, Coimbatore and quash the same as against the petitioner.

For Petitioner : Mr. S.Vijayakumar Subramanian

For Respondents : Mr.P.Govindarajan,
Additional Public Prosecutor for R1

: Mr.R.Bharath Kumar

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ORDER

The prayer sought for in the present petition is to call for the records relating to S.C.No.71 of 2015 on the file of the learned Principal Sub Judge, Coimbatore and quash the same.

for the petitioner submits that the parties have amicably settled the matter. It is further submitted that an affidavit dated 30.08.2017 has been filed and the same would show that they have no grudge against each other and the defacto complainant / respondent No. 2 has specifically agreed that he has no objection if the criminal case in question is quashed. It is further submitted that continuance of the criminal proceedings will be an exercise in futile and mere wastage of precious time of the Court and hence, the proceedings in S.C.No.71 of 2015 may be quashed.

3. Learned counsel appearing for the 2nd respondent/defacto complainant has not contested the submissions of learned counsel for the petitioner and by filing an affidavit dated 30.8.2017 signed by the 2nd respondent, he prays that the criminal proceedings be quashed. The learned counsel for the 2nd respondent / defacto complainant has also brought to the notice of this Court one recent judgment of Hon'ble Supreme Court rendered in the case of **NARINDER SINGH AND OTHERS V. STATE OF PUNJAB AND ANOTHER (2014) 6 SCC 466** wherein the Apex Court had quashed the criminal proceedings under Sections 307 of IPC in exercise of its power under Section 482 Cr.P.C. on the ground that the disputes were amicably settled between the parties.

4. The defacto complainant/2nd respondent as well as the petitioner are personally present before this Court and they have also been identified. An affidavit of the defacto complainant/2nd respondent

dated 30.08.2017 is also filed to the effect that the defacto complainant has no objection, if the present Criminal Original Petition is allowed.

5. Admittedly, the parties have entered into compromise and in view of compromise between the parties, there is a minimal chance of witnesses coming forward in support of the prosecution case. The chance of conviction, therefore, appears to be remote. The Hon'ble Apex Court in a recent case of **Narinder Singh & Ors. Vs. State of Punjab & Anr. (2014) 6 SCC 466** has quashed the criminal proceedings under Sections 307/324/323/34 I.P.C. on the basis of compromise entered into between the parties and has quashed the order of Punjab and Haryana High Court by which the High Court had refused to exercise its extraordinary discretion under Section 482 Cr.P.C. on the ground that the injury suffered by the complainant were serious in nature. It is useful to extract the relevant portion of the said judgment, which reads as follows:

30. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.

31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC.

For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea

compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

33. *In the present case, FIR No.121 dated 14.7.2010 was registered under Section 307/324/323/34 IPC. Investigation was completed, whereafter challan was presented in the court against the petitioner herein. Charges have also been framed; the case is at the stage of recording of evidence. At this juncture, parties entered into compromise on the basis of which petition under Section 482 of the Code was filed by the petitioners namely the accused persons for quashing of the criminal proceedings under the said FIR. As per the copy of the settlement which was annexed along with the petition, the compromise took place between the parties on 12.7.2013 when respectable members of the Gram Panchayat held a meeting under the Chairmanship of Sarpanch. It is stated that on the intervention of the said persons/Panchayat, both the parties were agreed for compromise and have also decided to live with peace in future with each other. It was argued that since the parties have decided to keep harmony between the parties so that in future they are able to live with peace and love and they are the residents of the same village, the High Court should have accepted the said compromise and quash the proceedings.*

34. *We find from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compel us to take a different view.*

35. *We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant.*

In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote.

It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010

registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly. “

6. In the light of the aforesaid facts and circumstances of this case and also in the light of the ratio laid down by the Hon'ble Apex Court as cited supra, this Court is of the view that it is not proper to refuse the settlement only due to the reason that the petitioner has been charged under non-compoundable offences.

Accordingly, the proceedings in S.C.No.71 of 2015 on the file of the learned Principal Sub Judge, Coimbatore is quashed. The Criminal Original Petition is allowed. Connected Miscellaneous petitions are closed.

30.08.2017

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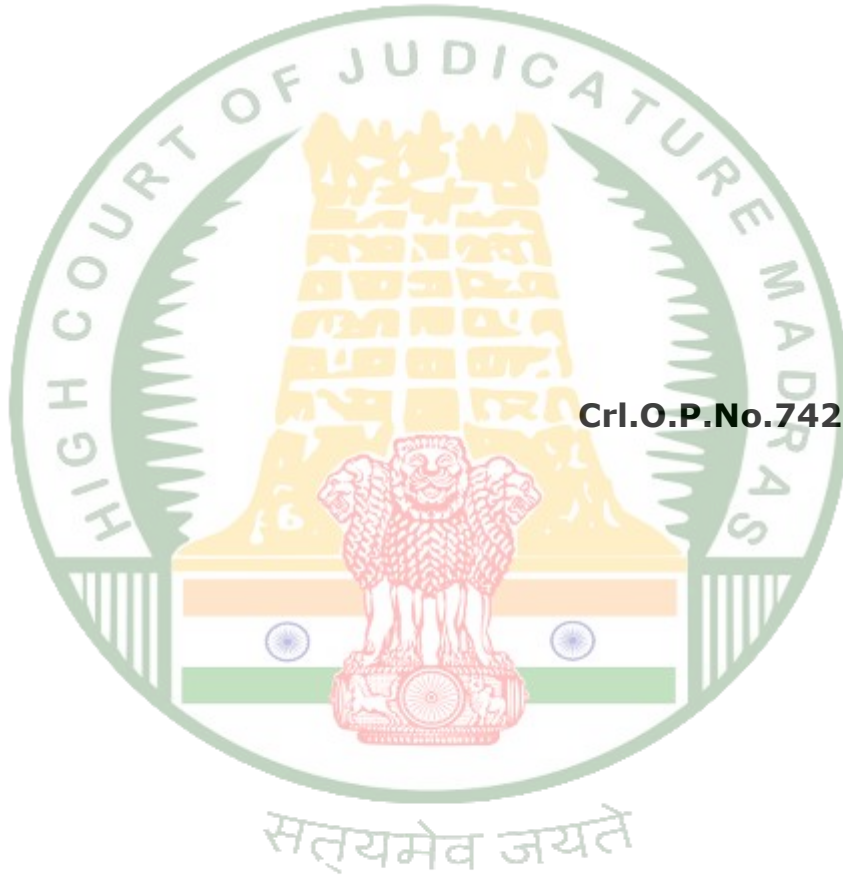
Index:Yes

1.The Principal Sub Judge, Coimbatore.

2.The Public Prosecutor, High Court, Madras.

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M.S.RAMESH.J,



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