

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HON`BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.25860 of 2013 and M.P.No.1 of 2013

1.Ulagaratchagan
2.Mrs.Sathyavathy

... Petitioners/Accused 2 and 3

Vs

State rep.by Inspector of Police,
W-24, All Women Police Station,
Teynampet, Chennai-600 024.
(Ref.Cr.No.04/05 dt. 25.04.2005)

... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.4200/2007 pending on the file of the XXII Metropolitan Magistrate, Saidapet for the offences under Sections 498A, 406, 420, 384, 506(ii) IPC & Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w Section 34 of IPC and quash the same.

For Petitioner	: Mr.A.Ramesh, Sr. Counsel for M/s. S.Chitra.
For Respondent	: Mr. B.Ramesh Babu, Government Advocate (Crl. Side)
For defacto complainant:	Mr.Tranquear Dorai Vasu

ORDER

This Criminal Original Petition has been filed by the

petitioners/Accused 2 and 3 to quash the Criminal proceedings in C.C.No.4200/2007 pending on the file of the XXII Metropolitan Magistrate, Saidapet for the offences under Sections 498A, 406, 420, 384, 506(ii) IPC & Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w Section 34 of IPC.

2. When the matter was taken up for hearing on 04.09.2017, Mr. Tranquear Dorai Vasu, learned counsel for the defacto complainant has made a mention that he is authorised by the defacto complainant to submit on her behalf that she is not interested in pursuing the case before the trial court and that she had also expressed her inclination of not to proceed with the case against the accused to the respondent police. It was also submitted that much water has flown below the bridge over the years and that both the first accused and the defacto complainant have got divorce and they are living in two different Continents. It was also further contended by the learned counsel that when the defacto complainant had expressed her unwillingness to proceed further in prosecuting the accused, no purpose would be served in continuing the proceeding and submitted that the quash petition may be allowed on the submissions made by him. Since neither the authorisation nor the memo was filed by the defacto complainant to the effect, Mr. Tranquear Dorai Vasu was directed to file a memo of the defacto complainant authorising him to appear on her behalf and also to state that she is not pressing the complaint

preferred in Crime No.04/2005 dated 25.04.2005 on the file of the Inspector of Police, W-24, All Women Police Station, Teynampet, Chennai-600 024 which has culminated into C.C.No.4200/2007 and now pending on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

3. Today, i.e 11.09.2017, when the matter was taken up for hearing, learned counsel for the defacto complainant Mr.Tranquebar Dorai Vasu, had filed a memo stating that the defacto complainant is not pressing the complaint preferred in Cr.No.04/05 dated 25.04.2005 on the file of the Inspector of Police, W24 All Women Police Station, Teynampet, Chennai 600 024 and hence, he prayed that the memo may be recorded and orders may be passed based on his submissions. He had also filed a letter dated 11.09.2017, sent to him by the defacto complainant authorising him to make an endorsement to this effect either in the Court or in the police station. The memo filed by the learned counsel reads as follows:-

“The Counsel for Defacto Complainant respectfully submits that the Defacto Complainant is not pressing the complaint preferred in Cr.No. 04/05 dt.25.4.2005 on the file of Inspector of Police, W 24 All Women Police Station, Teynampet, Chenai 600 024.

Therefore it is humbly prayed that this Hon'ble court may be pleased to record this memo and thus render justice.”

4. The dispute relates to matrimonial issue and the complaint had been filed in the year 2005 which has culminated into C.C.No.4200

of 2007 is pending for almost 10 years. The petitioners are father-in-law and mother-in-law of the defacto complainant. Now, after several years, time has come to heal the emotions of parties and they have arrived at a settlement and the defacto complainant has also expressed her intention not to proceed any further against the accused and that this Court feels that in such circumstance allowing the proceedings to continue further would be an abuse of process of law and an exercise in futility and that justice in the case demands that the dispute between the parties is put to an end and peace is restored; when securing the ends of justice being the ultimate guiding factor for this Court.

5. In the Judgment reported in **2012 (10) SCC 303 [Gian Singh vs. State of Pubjab and Haryana]**, three Judges Bench of the Hon'ble Apex Court has held as follows:- (paragraphs 52, 53, 54 and 57)

“52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

53. 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

offences 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 proceeding 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.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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 wrong doing that seriously endangers and threatens well-being of 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 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 [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between offender and 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 victim and the offender and 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 F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of 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.”

“57. 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 plenitude 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 F.I.R may be exercised where the offender and 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, dacoity, 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 serious impact on society. Similarly, any

compromise between the victim and offender in relation to the offences under special statutes like [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 cases having overwhelmingly and pre-dominatingly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

The decision rendered in ***B.S.Joshi v. State of Haryana 2003 Cr.LJ 2028 (SC)***, was also considered in the above judgment in respect of the scope of Section 320, vis-a-vis the inherent powers under Section 482 of the Code particularly in respect of Section 498(A) of IPC.

6. Learned Senior Counsel Mr.A.Ramesh, appearing for the petitioners, submitted that though the son of the petitioners who had been arrayed as A1 had not filed quash petition, the further proceedings against him would be an exercise in futility, in view of the intention of the defacto complainant not to proceed with the complaint preferred by her and prayed that the proceedings against the first accused who is none other than the son of the petitioners also be quashed and he relied on a judgment reported in **(1998) 7 SCC 698 (Ashok Chaturvedi vs. Shitulh. Chanchani)** and **2003 (2) CTC 270 (M/s. Pasumai Irrigation Limited vs. M/s. Mansi Finance (Chennai) Limited)**.

7. In the judgment reported in **(1998) 7 SCC 698 (Ashok Chaturvedi vs. Shitulh. Chanchani)**, the Hon'ble Apex Court has held as follows:- (Paragraph 6)

“6. It is true that out of 9 officials of the Company who are the accused persons in the criminal case, only 7 of them have preferred this special leave petition and R.K.Sharma, Whole-time Director, as well as Capt. G.P.S. Choudhary, Director of the Company have not preferred the special leave petition. But in view of our conclusion that the allegations in the complaint petition do not make out any offence against any of the officers of the Company, it would be futile to allow continuance of the criminal proceedings so far as the said two officers of the Company are concerned.”

8. In the judgment reported in **2003 (2) CTC 270 (M/s.**

Pasumai Irrigation Limited vs. M/s. Mansi Finance (Chennai)

Limited) the learned Single Judge of this Court has held as follows:-

(Paragraph 18)

“18. This petition has been filed only by the A.1 in the case praying to quash the criminal proceedings. But, as it has been already observed supra, since the very initiation of the said proceeding is an abuse of process of law, this Court is of the view that the technicalities should not stand as obstacles in rendering justice and therefore the criminal proceedings are liable to be quashed even against the other accused, who are not the petitioners herein.

In the result,

(i) The above criminal original petition is allowed.

(ii) The proceedings in C.C.No.4628 of 2000 on the file of the Court of VII Metropolitan Magistrate, George Town, Chennai are quashed in respect of all the accused therein.

Consequently, Crl.M.P.No.8962 of 2000 is closed.”

9. As rightly stated by the learned Senior Counsel for the petitioners, in view of the intention of the defacto complainant not to proceed with the case against the accused, no purpose would be served by keeping the complaint pending against the A1 and the entire proceedings will be an exercise in futility.

10. Taking into consideration the submissions made by the learned Senior Counsel for the petitioners and in view of the memo filed by the counsel for the defacto complainant coupled with the decision of the Hon'ble Apex Court, and having regard to the fact that

the entire dispute between the defacto complainant and the accused had been given a quietus and the defacto complainant had expressed her intention not to proceed with the complaint, this Court feels that there is no impediment in quashing the complaint in respect of the husband-first Accused, who is not before this Court, since technicality should not stand as obstacles in matrimonial matters when the parties have decided to settle their disputes amicably and purchased peace, although the offence under Section 498A alone is non-compoundable.

11. In the result, the proceedings in C.C.No.4200 of 2007 pending on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, in respect of the petitioners who are A2 and A3 and also against the A1 who is the son of the petitioners, is quashed and the Criminal Original Petition is disposed of accordingly. The memo dated 11th September, 2017, annexing the letter of the defacto complainant shall form part of the records. Consequently, M.P.No.1 of 2013 is closed.

04.09.2017

gr.

Index : Yes

Internet: Yes

To

1. The XXIII Metropolitan Magistrate, Saidapet, Chennai,
2. Inspector of Police, W-24, All Women Police Station, Teynampet, Chennai-600 024.
- 3.Public Prosecutor, High Court, Madras.

A.D.JAGADISH CHANDIRA, J

gr.

Crl.O.P.No.25860 of 2013

11.09.2017