

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM

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

Crl.O.P.No.26556 of 2013 and M.P.No.1 of 2013

N.Guhan

... Petitioner/1st Accused

Vs

1.State, represented by
Inspector of Police,
Crime Branch CID,
Kancheepuram.

... Respondent/Complainant

Crime No.1 of 2009.

2.B.Umapathy

3.B.Rajendran

complainants

... Respondents/De facto

Criminal Original Petition filed under Section 482 Cr.P.C to call for the records and quash the proceedings in C.C.No.198 of 2013 pending on the file of the Judicial Magistrate No.I, Chengalpattu.

For Petitioner : Mr.K.Vijayaraj

For 1st Respondent: Mr. B.Ramesh Babu,
Government Advocate (Crl. Side)

For 2nd & 3rd
Respondents : Mr.N.Baskaran

ORDER

This Criminal Original Petition has been filed by the

petitioner/first accused to quash all further proceedings in C.C.No.198 of 2013 filed against him for the offences alleged under sections 120(B), 419, 420, 109, 114, 465, 468 and 471 IPC.

2. The 2nd and 3rd respondents are the defacto complainants in this case. The charge against the petitioner/A1 is that he instructed A-3 Nathan @ Raghunathan to impersonate as Umapathy and A-4 Murugan as Rajendran and further A-5 Selvam was instructed to affix witnesses signatures of fictitious persons as Mani s/o Muthu, No.97/1, Jeevan Nagar, Chennai-80 and K.Prakash, S/o Kalaimaran, V.S.M.Garden, Chennai-83 to execute their criminal conspiracy and make huge amount of money in a short period and in pursuance of the criminal conspiracy, he prepared General Power of Attorney through complainants partition deed document and thereafter, the petitioner/A1 along with A2 to A5. A3 impersonated as complainant Umapathy, affixed his photo on the sale deed, signed in the document and affixed thumb impression and showed the said A3 as land owner Umapathy, as if Umapathy gave Power of Attorney to A-6 with regard to the sale of 2.67 acres of lands situated in No.131, Vadakkupattu Village, Sriperumbudur Taluk, Kancheepuram District which belongs to the complainant Umapathy. A-4 Murugan impersonated as complainant's brother Rajendran, affixed his photo on the sale deed,

signed in the document and affixed thumb impression and showed the said A3 as land owner Rajendran as if Rajendran gave Power of Attorney to A-6 with regard to the sale of 2.69 acres of lands situated in No.131, Vadakkupattu Village, Sriperumbudur Taluk, Kancheepuram District which belongs to the complainant's brother Rajendran. A-5 Selvam signed witnesses signatures as Mani s/o Muthu, No.97/1, Jeevan Nagar, Chennai-80 and K.Prakash, S/o Kalaimaran, V.S.M.Garden, Chennai-83 of fictitious persons in the above documents, had cheated the SRO officials of Anna Nagar, Chennai. Knowing fully well the above properties were obtained through impersonation and by defrauding the complainant and his brother and used the forged document Nos. 614/09 and 615/09 as genuine, A-6 Prithivkumar had sold the entire properties to ALMCO Properties Pvt. Ltd., Chennai-119, in Document Nos. 1516/2009 and 1517/2009 dated 31.03.2009 for Rs.1,56,02,000/- and Rs.1,54,86,000/- respectively, at Sub-Registrar Office, Wallajabad, Kancheepuram District and thereby, the accused have committed the offences punishable under sections 120(B), 419, 420, 109, 114, 465, 468 and 471 IPC.

2. It is represented by the learned counsel for the petitioner that after coming to know about the registration of the case against

the petitioner/A1 and the impersonation committed by the persons (impersonated as defacto complainants`), had cancelled the sale deeds executed in favour of M/s.ALMCO Properties Private Limited by way of Deeds of Cancellation of Sale Deeds, bearing Document No.5024/2009 and 5025/2009, both dated 25.10.2009. Further, after cancellation of the sale deeds, the petitioner and the 2nd and 3rd respondents/defacto-complainants (owners of the property) have entered into a compromise deed.

3. Today, a joint compromise memo signed by the petitioner, second and third respondents and their respective counsels, has also been filed by the parties in the presence of the counsels. The counsel for the petitioner as well as the counsel for the 2nd and 3rd respondents/defacto complainants stated that on 25.11.2009, the petitioner had cancelled the sale deed executed in favour of M/s ALMCO Properties (P) Ltd., in Document Nos. 1516/2009 and 1517/2009 dated 31.03.2009 on the file of the Sub-Registrar Office, Walajabad and that they have entered into a compromise and the matter is settled out of court and that they do not want to proceed with the matter further.

4.Learned Government Advocate (Crl. side) was also heard. The

learned Government Advocate submits that he has no objection to pass appropriate orders on the basis of the joint compromise memo filed by the parties.

5. In a Judgment reported in **2012 (10) SCC 303 [Gian Singh vs. State of Punjab 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-dominantly 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."

A.D.JAGADISH CHANDIRA, J

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6. Following the proposition laid down in the judgment rendered by the Hon'ble Apex Court, since the dispute between the petitioner/accused and the respondents/defacto complainants bear civil flavour having arisen out of civil and also in view of the earlier order passed by this Court in CrI.O.P.No.3143 of 2017 in respect of 6th accused, the proceedings in C.C.No.198 of 2013 pending on the file of the Judicial Magistrate No.I, Chengalpattu is quashed against the petitioner/1st accused and the Criminal Original Petition is disposed of accordingly. The joint memo of compromise dated 28th August, 2017, forms part of the record. Consequently, connected miscellaneous petition is closed.

29.08.2017

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Index : Yes
Internet: Yes

To

1. The Judicial Magistrate No.1, Chengalpattu.
2. The Public Prosecutor, High Court, Chennai.
3. Inspector of Police, Crime Branch CID, Kancheepuram.

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