

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 213 of 2018**

1. Nand Kumar Sahu, S/o. Shri Radheshyam Sahu, Aged About 38 Years, R/o. Village Chhote Kareli, P.S. Magarlod, District Dhamtari Chhattisgarh.
2. Khumendra Sahu, S/o. Shri Bhisham Lal Sahu, Aged About 21 Years, R/o. Village Chhote Kareli, P.S. Magarlod, District Dhamtari Chhattisgarh
3. Aslam Khan, S/o. Shri Abdul Sattar, Aged About 36 Years, R/o. In Front Of Gaffur Manzil, Moudhapara, P.S. Moudhapara Raipur, District Raipur, Chhattisgarh
4. Komail Haidar, S/o. Shri Azaz Haider, Aged About 27 Years, R/o. In Front Of Libaj Tailor, Gaji Momin Para, Ward No. 38, Tatyapara, P.S. Azad Chowk, Raipur District Raipur Chhattisgarh
5. Saeed Khan, S/o. Late Shri Hatim Khan, Aged About 50 Years, R/o. Subhash Nagar, Near Pithaliya Complex, Mouhadapara P.S. Mouhadapara, Raipur District Raipur Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh, Through Station House Officer, Police Station Gol Bazar, (Special Investigation Cell), Raipur District Durg Chhattisgarh, District : Durg, Chhattisgarh
2. Rajkumar Sahu, S/o. Shri Radhe Shyam Sahu, Aged About 42 Years, R/o. Village Chhoti Kareli, Tahsil & P.S. Magarold, Tahsil Kurud, District Dhamtari, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Awadh Tripathi, Advocate
For Respondent No.1	:	Mr. S.R.J.Jaiswal, Panel Lawyer
For Respondent No.2	:	Mr. Avinash Chand Sahu, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****02.05.2018**

Heard

1. The present petition is against the order dated 27.11.2017 whereby the application preferred by the complainant under Section 320(2) of Cr.P.C. has been dismissed.
2. As per the prosecution case, a report was made on behalf of Rajkumar

Sahu, complainant, that he was holding a land alongwith his brother Nand Kumar Sahu, however, Nand Kumar Sahu alongwith one Khumendra Sahu who was projected as Rajkumar Sahu sold the land to Aslam Khan and Saeed Khan was a broker; thereby the offence has been registered.

3. Learned counsel for the parties would submit that the parties have entered into compromise and since the accused Nand Kumar Sahu & complainant Rajkumar Sahu are related to each other and they are recorded their statement before the Additional Registrar (Judicial) that Rajkumar is not interested to continue his complaint, therefore, the proceeding of the Criminal Case No.448/2012 pending before the J.M.F.C. Raipur be quashed.
4. Perused the statement of Rajkumar Sahu, the complainant, wherein he has stated that after the FIR was lodged under Section 420, 467, 468, 471 & 120(B) of Indian Penal Code. Subsequently, the charge sheet was filed, which was bearing Criminal Case No.448/2012. It is stated that during the pendency of the criminal case all the parties have entered into compromise and he do not want to prosecute further his complaint and therefore the criminal case has been sought to be quashed.
5. The Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Another***¹ has laid down the following principles :

“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 plenitude with no statutory limitation but it

¹ (2012) 10 SCC 303

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 predominatingly 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.

6. Further, in case of ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. v. State of Gujarat & Ors.***² their Lordship again reiterated the view taken in case of ***Gian Singh*** (supra) and has laid down the following propositions :

“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

² (2017) 9 SCC 641

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause

oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

7. Considering the fact that the complainant was brother of Nand Kumar Sahu, one of the accused and taking into the nature of allegation, it appears that the complainant himself do not want to prosecute his complaint which is private in nature and further following the principles laid down by the Supreme Court in the above cited cases, I am inclined to quash the criminal proceedings against the petitioners in Criminal Case No.448/2012 pending before the J.M.F.C. Raipur, Chhattisgarh.
8. Accordingly, the petition is allowed. The proceedings against the petitioners in Criminal Case No.448/2012 pending before J.M.F.C. Raipur is quashed and the petitioners are acquitted of the charges under Section 420, 467, 468, 471 & 120-B of Indian Penal Code.

Sd/-
(Goutam Bhaduri)
Judge