

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 969 of 2018

Hargovind Arora S/o Shri Roshanlal Arora Aged About 69 Years R/o-
E-197, Amar Colony, Lajpat Nagar, Police Station-Amar Colony, New
Delhi, Delhi

--- Petitioner

Versus

1. State of Chhattisgarh Through- Station House Officer, Police Station-
City Kotwali, Raipur, District- Raipur, Chhattisgarh.
2. Smt. Vandana Rai W/o Shri R.K. Rai Aged About 45 Years R/o-
Deendayal Upadhyay Nagar, Raipur, District- Raipur, Chhattisgarh..

--- Respondents

For Petitioners : Mrs. Fouzia Mirza, Advocate
For Respondent No.1/State : Mr. Sangharsh pandey, Govt. Adv.
For Respondent No.2 & 3 : Mr. Vivek Kumar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

20.06.2018

1. This petition is against the order dated 27.4.2018 passed by the JMFC, Raipur in Champa in Criminal Case No.278/2011 whereby the application preferred under Section 320(2) and 320(2) of Cr.P.C., to compound the offence was partly allowed and the offence u/s 420, 506 Part-II was compounded. However, the application for compounding the offence u/s 409 read with section 34 of IPC was disallowed.
2. As per the case of the complainant/respondent No.2, a complaint was made that one Rakesh Chauhan projected himself to be the Director of M/s. Adviance Infra & Basic Amenities Ltd., Delhi which manufactures safety devices in

the mobile field i.e., mobile cover, chip and heart guard to prevent radiation from mobile phones and thus allured the complainant to be appointed as their Clearing & Forwarding Agent to sell the mobile cover, chip and heart guard on behalf of the Company and in lieu thereof an amount of Rs.21 lakhs was paid as security amount and subsequently the company was closed and the agreement was cancelled. Therefore, on a complaint being made, the offence was registered under sections 420, 407, 409, 506, 34 of IPC.

3. The learned court below has recorded the fact that offence u/s 420 & 506 Part-II is compoundable with the permission of the Court and the offence u/s 407 of IPC is compoundable without permission of the Court, however, the offence u/s 409 of IPC is not compoundable. Therefore, the trial shall continue against the petitioner for the offence u/s 409 of IPC read with section 34 of IPC
4. Learned counsel for the petitioner would submit that it was a business transaction and the entire dispute between the parties is purely civil in nature and the parties have amicably settled their dispute and the complainant do not want further prosecute her claim which would be evident from the application filed before the Court below as also from the statement recorded before the registry of this Court. Therefore, under the circumstances the offence may be directed to be compounded and the petitioner may be discharged.

5. Counsel for the complainant/respondent also supports the application and submits that the compromise has been effected therefore she do not want to further prosecute her complaint against the petitioner.
6. Perused the statement of complainant Vandana Rai who is arrayed as respondent No.2. She has stated in her complaint that she made a complaint against the petitioner and others and the offence was registered u/s 420, 407, 409, 506 Part 2 read with section 34 of IPC in pursuance of FIR No.45/2010. It is further submitted that after investigation, the charge sheet was filed and the criminal case No. 278/2011 was registered which is pending before the JMFC Raipur. It has been stated that during the pendency of criminal case, the parties have amicably settled their dispute and she do not want to further prosecute her complaint, therefore, the petitioner may be exonerated.
7. With respect to compounding the offence, Hon'ble the Supreme Court in ***Gian Singh v. State of Punjab & Another reported in (2012) 10 SCC 303*** has laid down the following principles :

“61. The position that emerges from the above discussion can be summarized 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.

8. Further, in case of ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors.*** in Criminal Appeal No.1723 of 2017 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 recognizes 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;

(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.

9. Taking into consideration the nature of business transaction between the parties which is purely civil in nature and applying the principles laid down by the Supreme Court in *Gyan Singh (Supra)* and *Parbatbhai Aahir (Supra)*, I am inclined to allow this petition.

10. Accordingly this petition is allowed. The proceedings of Criminal Case No. 278/2011 pending before the JMFC Raipur against the petitioner is quashed. The petitioner is acquitted

of the charges u/s 409 read with section 34 of IPC.
Consequently Crime No.45/2010 registered at P.S. City
Kotwali, Raipur also stands quashed.

**Sd/-
GOUTAM BHADURI
JUDGE**

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