

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.1144 of 2017

(Smt. Nirmala w/o. Sundarshan Muley and another .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.A.P.Dubey, Advocate for the petitioner.
Mr.S.J.Kadu, A.P.P. for respondent no.1.
Mr.Aniket R. Tichkule, Advocate for respondent no.2.

CORAM : P. N. DESHMUKH &
M. G. GIRATKAR, JJ.

DATE : 17.7.2018.

1. Prayer in this petition is to quash Criminal Case No.3743 of 2012 pending on the file of Judicial Magistrate, First Class, Court No.8, Nagpur contending that the issue is amicably settled between respondent no.2 and the petitioner and respondent no.2 has accordingly filed on record in above numbered case application for withdrawal of complaint lodged by her on 9.8.2012 vide Exh.36 and with this application, has also placed on record Compromise Pursis at Exh.37 stating that as the issue is amicably resolved between the applicant and said respondent no.2 out of the Court, she is not interested in prosecuting her claim. Upon considering their application, the learned trial Court passed the order dt.10.4.2018, which is reproduced as under :

*“The alleged offences are non-compoundable.
Hence, the permission can't be given to complainant*

to withdraw the complaint. The court has no inherent power to do so. Hence, application rejected. ”

2. In view of rejection of application as above, present petition is filed for quashing of proceedings in Criminal Case No.3743 of 2012 registered for the offences punishable under Sections 294, 295, 296, 506(B), 323 r/w. 34 of the Indian Penal Code. Learned Counsel for the petitioner submits that, on the day of recording evidence as respondent no.2 agreed for withdrawal of complaint, she filed Exh. Nos. 36 and 37. However, the learned trial Judge rejected the same and thus, it is submitted that as complainant is not interested in prosecuting her complaint, the petition be allowed.

3. Mr.S.J.Kadu, learned A.P.P. for respondent no.1 and learned Counsel for respondent no.2 submit that respondent no.2 had signed Exh.36 - application for withdrawal of complaint as well as Exh.37 - Compromise Pursis as she was made to understand that her signatures were required on those documents on the day on which her evidence is recorded and accordingly, her signatures were obtained by misleading her and to substantiate this submission, have referred to her evidence, copy of which is filed with petition recorded on 3.9.2016. The date of application for withdrawal of complaint (Exh.36) and on Compromise Pursis (Exh.37) is also 3rd September, 2016. In that view of the matter, there appears substance in the case of respondent no.2 that under a false belief she had signed

both these documents on the day on which her evidence is recorded before the trial Court. In that view of the matter, there is nothing to hold that respondent no.2 is willing to compromise the complaint.

4. Learned Counsel for the petitioner, for the purpose of present petition, has relied on the case of Yogendra Yadav and Others vs. State of Jharkhand and another reported in (2014) 9 SCC 653, wherein it is held that High Court has power to quash Criminal proceedings under Section 482 of the Code of Criminal Procedure, even though offence alleged is non-compoundable, if parties have amicably settled their disputes and victim has no objection.

5. The law laid down as aforesaid, as such, cannot be applied in the present petition for the reason that respondent no.2/complainant had come out with a specific case that she is not a party to amicable settlement and her signature on Compromise Pursis as well as on the application for withdrawal of complaint are obtained by misleading her. In that view of the matter, the Writ Petition does not succeed. The same is, therefore, dismissed with no order as to costs.

JUDGE

JUDGE

**jaiswal*