

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.8060 of 2018

1.R.Saravanan

2.R.Ganesh

..Petitioners

Vs

1. The State. Rep by

The Inspector of Police,
Ayanavaram Police Station,
Chennai.

(Crime No. 20 of 2018)

2.C.Meena

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No. 20 of 2018 on the file of the Inspector of Police, Ayanavaram Police Station, Chennai and quash the same.

For Petitioners : Mr.R.Anbukarasu

For Respondent-1 : Mrs.Kritika Kamal.P
Government Advocate (Crl. Side)

For Respondent-2 : Mr.L.Baskaran

ORDER

The prayer sought for in the present petition is to call for the records in Crime No. 20 of 2018 on the file of the Inspector of Police, Ayanavaram Police Station, Chennai and quash the same.

2. Heard Mr.R.Anbukarasu, learned counsel for the petitioners and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing on behalf of the first respondent as well as Mr.L.Baskaran, learned counsel for the second respondent.

3. Today, when the matter is taken up for consideration, the learned Government Advocate (Crl.Side) vehemently opposed the petition saying that by taking into account the seriousness of the offences and in view of Section 306 IPC, the offences are not compoundable.

4. The learned Government Advocate (Crl.Side) by relying upon the suicide note as well as case diary has submitted that

due to persistent demands of the petitioner herein, the deceased has taken this ultimate decision. As such, it is her submission that the petitioners herein should be made to face trial and compounding the offence at this stage may not be proper.

5. I have perused the suicide note of the deceased. The deceased after narrating entire transaction between the petitioner and her son had specifically mentioned therein that he felt cheated by the petitioners herein and in view of this, he was under depression and frustration for the past four days prior to this death and therefore he had taken extreme step.

6. On a overall perusal of the suicide note, I do not find any sentence or even intention of the deceased that it was these petitioners, who had abetted or instigated him to commit suicide. As a matter of fact, while concluding the suicide note, the deceased had admitted that the petitioners herein had promised in the name of god to return the money to him.

7. In my view, as per the confession of the deceased in the suicide note, the death was not due to the abetment of the petitioners herein and that he had taken this extreme and unfortunate decision due to depression and frustration since he felt he was cheated and also trusted and believed that the petitioners' would honour their promise to register the property in his name. Incidentally, it is seen that after the death of the deceased/ complainant's husband, the petitioners herein had registered the property in the name of the complainant and her son through sale deeds dated 31.01.2018 registered in Document Nos. 201 of 2018 and 203 of 2018 respectively on the file of the Sub Registrar, Tusi, Tiruvannamalai District.

8. As observed earlier, this Court exercising its powers under Section 482 Cr.PC is well within its powers to compound a non compoundable offence in order to secure the ends of justice.

9. The learned Government Advocate (Crl.Side) has submitted a judgement reported in (2012) 9 SCC 734 in a case of Praveen Pradhan Vs. State of Uttranchal and another in Crl.Appel No. 1589 of 2012, dated 04.10.2012. The relevant portion of the said judgment is extracted below;

15. In Chitresh Kumar Chopra Vs. State (Govt. of NCT OF Delhi) this Court while dealing with the term "instigation" held: (SCC p.611 paras 16-17)

"16. instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of 'instigation', though it is not necessary that actual words must be used to that effect or what constitutes 'instigation' must necessarily and specifically be suggestive of the

consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goading' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction'... to keep irritating or annoying somebody until he reacts..."

16. This Court in Ramesh Kumar Vs. State of Chhattisgarh while dealing with a similar situation observed that what constitutes "instigation" must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide."

9. The aforesaid judgment cited by the learned Government Advocate may not have relevance in the present case and in view of the findings that the case of the prosecution is abatement of suicide note, the categorical statements of the deceased in the suicide note that he was frustrated having been cheated and had gone under the depression.

10. Incidentally, on an identical set of facts, the Hon'ble Supreme Court had an occasion to compound the offence under Section 306 IPC r/w Section 34 IPC, wherein, after referring to Full Court judgment of the Punjab and Haryana High Court and held as follows;

The relevant portion of the judgment in 2013 SCC Online P & H 23906 in a case of Raj Singh Ahlawat and others Vs. State of Haryana and another in CrI.Misc.No. M-39269 of 2012, dated 18.11.2013 is extracted below;

As per the Full Bench judgment of this Court in Kulwinder Singh Vs. State of Punjab, 2007(3) RCR (Criminal) 1052, High Court has power under Section 482 Cr.P.C to allow

the compounding of non-compoundable offence and quash te prosecution where the High Court felt that the same was required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. This power of quashign is not confined to matrimonial disputes alone.

Hon'ble the Apex Court in the case of Gian Singh Vs.State of Punjab 2012 (4) RCR (Crl.) 543, has held as under;

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceedings 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 ode. 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 R.T.I 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 victime 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 of 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 if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

Since the parties have arrived at compromise and decided to live in peace, no useful purpose would be served if keeping it pending the present Criminal Original Petition.

11. The learned Senior Counsel for the petitioners on the other hand by relying upon the judgment of the Hon'ble Supreme Court made in Unnikrishnan @ Unnikuttan Vs. State of Kerala in CrI.MP. No. 18630 of 2016 dated 01.03.2017 stating that even in case where the offences are not compoundable registered under Section 320 Cr.P.C., in view of the compromise arrived at between parties, the same can be considered. The relevant portion of the judgment are as follows;

"11. What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

12. Having regard to the facts of the present case, while taking into account the settlement arrived at between the parties and also considering the affidavits filed before us by each one of the applicants by way of joint application, we allow the application seeking permission to compound the offences."

12. In view of the above observations of the Hon'ble Supreme Court, I am of the considered opinion, the ends of justice would be met by permitting the petitioners to compound the offences in view of the compromise arrived at between parties.

13. It is submitted by the learned counsel for the petitioners that pending Criminal Original Petition, the defacto complainant and the petitioners have amicably resolved the

dispute among themselves and accordingly, they have entered into a compromise.

14. In order to identify, the 2nd respondent/de-facto complainant has submitted the photo copy of her Aadhar Card viz., C.Meena - 811228667199 and after verification of the original card, the same is recorded.

15. An Affidavit dated 15.03.2018 was filed by the 2nd respondent/de-facto complainant to the effect that the defacto complainant has no objection, if the present Criminal Original Petition is allowed and to compound the offence.

16. Recording the same, the investigation in Crime No. 20 of 2018 pending on the file of the Inspector of Police, Ayanavaram Police Station, Chennai stands quashed. The affidavit dated 15.03.2018 filed by the second respondent/defacto complainant shall form part of the order.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Ayanavaram Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

+2 cc to M/s.R.Anbukarasu Advocate sr 21892

Cr1.O.P.No.8060 of 2018

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