

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.2142 of 2017
and Crl.M.P.No.1527 of 2017

Thaufiq .. Petitioner

Vs.

1.State rep. by
The Inspector of Police,
S1, St.thomas Mount Police Station,
Chennai. ... 1st Respondent/Complainant

2.Chandru@ chandrakumar .. 2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the proceedings in PRC No.19/16 on the file of the Judicial Magistrate, Alandur in so far as the petitioner is concerned.

For Petitioner : Mr.N.A.Nissar Ahmed

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

For Respondent 2 :Mr.B. Sivakumar

O R D E R

This petition has been filed seeking to quash the proceedings in PRC No. 19 of 2016 pending on the file of the first respondent, insofar as the petitioner herein is concerned.

2.The case of the prosecution is that due to prior enmity on the date of occurrence, the petitioner along with others have quarreled with the defacto complainant and threatened with dire consequences. Hence, a complaint came to be registered in Crime No.49 of 2015.

3.The petitioner herein has been arrayed as fifth accused in PRC No.19 of 2016. During the investigation, the petitioner herein and the defacto complainant have amicably resolved the dispute among themselves.

4.It is also pertinent to note that the defacto complainant as well as the petitioner/accused are personally present before this Court. In order to identify themselves, the petitioner and the 2nd respondent/ defacto complainant have submitted the photo copies of their Identity Cards viz., Mohammed Thowfeeq - Aadhar Card No.442681863127, and Chandru kumar - Aadhar Card No.5818 04858051 and after verification of the originals, the same are recorded.

5.The second respondent /defacto complainant has also agreed to quash the proceedings in PRC No. 19/2019, insofar as the petitioner herein is concerned and to that he filed an affidavit dated 23.01.2018 to the effect.

6.The learned Additional Public Prosecutor opposed the proposition and submitted that the partial quashing of the FIR, with regard to one accused alone is not permissible in law. He also submitted that the offence made out in the complaint are non-compoundable and a heinous offences and therefore, objected to having the FIR quashed, insofar as the petitioner alone is concerned.

7.At this juncture, it would be appropriate to refer to the Judgement of the Hon'ble Supreme Court in the case of Lovely Salhotra and another Vs. State NCT of Delhi and another (Criminal Appeal No.670 of 2017), wherein, it has held that a FIR can be quashed in part, on the basis of the facts of each case and when one of the accused has offered to settle the issue amicably with the complainant, he should not be allowed to suffer by refusing to have the investigation quashed as against him.

8.The same proposition has been reiterated in a decision of the Punjab and Haryana High Court, in the case of Balvinder Kumar @ Eidhu Vs. State of Punjab and another reported in CRM-M-16847-2014 by relying on three other Judgements of the same Court wherein it was held that partial quashing of the FIR is permissible. Likewise, the other Judgement of Punjab and Haryana High Court in CrI.Misc.No.M-23739 of 2010 has held as follows.

"Broad guidelines have been laid down by the Full Bench of this Court in the case of Kulwinder Singh and Ors. Vs. State of Punjab and another 2007(3) RCR (CrI.) 1052 for quashing the prosecution when parties entered into compromise. The Full Bench has observed that this power of quashing is not confined to matrimonial

disputes alone. The relevant portion of the Judgement reads as under:-

26. In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Shawney and others, (1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:-

"The finest hour of justice arrived propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

28. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social emity and reduces friction, then it truly is finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation."

9. In view of the aforesaid precedents and in order to meet the ends of justice, it would be appropriate to entertain the prayer sought for by the petitioner.

10. Recording the affidavit filed by the defacto complainant, the proceedings in PRC No. 19 of 2016, on the file of the first respondent police is partially quashed, insofar as the petitioner/5th accused is concerned. The Criminal Original Petition is allowed. It is made clear that the first respondent police is at liberty to proceed with the investigation, insofar as the other accused are concerned. During the course of investigation, if the investigation officer is of the opinion that the petitioner herein is involved in any other offence, it is open to him to charge the petitioners for such an offence.

11. The affidavit filed by the 2nd respondent/defacto complainant dated 23.01.2018 shall form part of the order. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

aav

To

1. The Judicial Magistrate.
Alandur.

2. The Inspector of Police,
S1, St.thomas Mount Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.A.NISSAN AHMED, Advocate, S.R.No. 5088

Cr1.O.P.No.2142 of 2017

SSI (CO)
TR(02/03/2018)

WEB COPY