



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2018

CORAM :

WEB COPY THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. (MD) No.20382 of 2018

1. Mohamed Asik

2. Asan Ali

3. Niyas Kahn
(wrongly mentioned in FIR as
Niyas)

4. Seen Ahamed

5. Sheik Jalal

6. Mohamed Nowsath Ali
(wrongly mentioned in FIR as
Nawasath)

7. Bismi Mohaideen ... Petitioners 1 to 7 /
Accused A1, A2, A4 to A8

-vs-

1. State Rep. by the Sub-Inspector of Police
Thiruppullani Police Station
Ramanathapuram District
(In Crime No.16 of 2015) ... 1st Respondent / Complainant

2. Mohamed Meerasa ... 2nd Respondent /
De facto Complainant

PRAYER : Criminal original petition is filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining in Crime No.16 of 2015, on the file of the first respondent and quash the same as against the petitioners.

For Petitioners : Mr.A.S.Alaudeen

For Respondents : Mr.A.Robinson
Government Advocate (Criminal Side)
for R1



O R D E R

The criminal original petition has been filed seeking to quash the proceedings in Crime No.16 of 2015, pending on the file of the first respondent - Police, for the offences under Sections 147, 341, 294(b), 323 and 506(i) I.P.C.

2. The case is under investigation. By passage of time, the parties have decided to bury their hatchet and compromise the dispute amicably among themselves.

3. The learned counsel for the petitioners would submit that the third accused has gone abroad and he is not before this Court. However, he would submit that this Court in earlier occasions had quashed the criminal proceedings in respect of the persons, who are before this Court.

4. It is pertinent to note that the second respondent / *de facto* complainant as well as the petitioners herein are personally present before this Court. In order to identify themselves, the petitioners herein and the 2nd respondent / *de facto* complainant have submitted the photocopies of their identity cards and after verification of the originals, the same are recorded.

5. The second respondent / *de facto* complainant has also agreed to quash the proceedings in Crime No.16 of 2015, on the file of the first respondent - Police, insofar as the petitioners herein are concerned and to that effect a joint memo of compromise signed by both the parties as well as their respective counsels has also been filed.

6. The learned Government Advocate (Criminal Side) would submit that the partial quashing of the proceedings, with regard to few accused alone is not permissible in law. He would also submit that the offence made out in the complaint are non-compoundable and are heinous offences and therefore, objected to having the proceedings quashed, insofar as the petitioners alone are concerned.

7. The learned counsel for the petitioners would submit that this Court in similar matters in ***Cr1.O.P. (MD) No.28475 of 2017***, vide ***order dated 20.12.2017*** and in ***Cr1.O.P. (MD) No.2142 of 2018***, vide ***order dated 23.01.2018***, had partially quashed the proceedings in respect of few accused alone.

8. This Court feels it apposite to refer to the Judgment of this Court in ***Cr1.O.P. (MD) No.28475 of 2017 dated 20.12.2017***. The relevant portion, namely, Paragraph Nos.8 and 9 of the said Judgement, reads as follows:-



"8. 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.

9. 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 Crl.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 (Crl.) 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) if the Cr.P.C., or any other



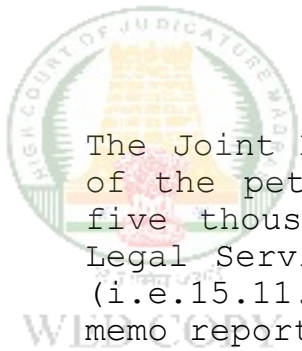
such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

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. Further, a joint memo of compromise has also been filed by the parties and their respective counsels. Parties are also present before this Court and they have been identified by the respondent Police. This Court also enquired the parties and is satisfied that the parties have come to an amicable settlement between themselves. When the parties have buried the hatchet between themselves and entered into a compromise to amicably settle the issues and purchase peace, no reasonable purpose will be served by keeping this petition pending.

10. In view of the aforesaid precedent and in order to meet the ends of justice, it would be appropriate to entertain the prayer sought for by the petitioners.

11. Recording the joint memo of compromise filed by both the petitioners and the second respondent / *de facto* complainant, the proceedings in Crime No.16 of 2015, on the file of the first respondent - Police is partially quashed, insofar as the petitioners herein 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, namely, A3 is concerned. During the course of investigation, if the investigation officer is of the opinion that the petitioners herein are involved in any other offence, it is open to him to charge the petitioners herein for such an offence.



The Joint Memo of Compromise shall form part of the order. Each of the petitioners herein shall pay a sum of Rs.3,000/- (Rupees five thousand only) as costs, to the credit of the High Court Legal Services Authority within a period of two weeks from today (i.e.15.11.2018) and file a photocopy of the receipt along with a memo reporting compliance in the Registry.

12. Post the matter after two weeks for reporting compliance.

Sd/-

Assistant Registrar (ADI)

// True Copy //

Sub Assistant Registrar(CS-I)

Encl.: XEROX COPY OF JOINT COMPROMISE MEMO.

To:

1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

2.The Sub-Inspector of Police,
Thiruppullani Police Station,
Ramanathapuram District.

COPY TO

1. The Section officer,
Legal Service Authority,
Madurai Bench of Madras High Court, Madurai.

2. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)
(for Reporting compliance)

Cr1.O.P.(MD) No.20382 of 2018

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TR/SV/SAR-I (22.11.2018) 5P 6C