



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2018

CORAM:

**THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA**

W.P (MD) No. 20025 of 2017

Muthu Murugan

: Petitioner

Vs.

1. The Bar Council of Tamil Nadu
and Puducherry,
Rep. By its Secretary,
High Court Campus, Chennai - 104.

2. The Inspector of Police,
Temple Police Station,
Rameswaram,
Ramanathapuram District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to process the petitioner's application for enrollment as an Advocate in the Bar Council of Tamil Nadu and Puducherry submitted on 24.08.2017 vide Application No. 2347 without reference to the case registered in Crime No. 84 of 2012, dated 01.04.2012, on the file of the second respondent and permit him to enroll as an Advocate forthwith.

For Petitioner : Mr. M. Jothi Basu

For R - 1 : Mrs. Saranya
for Mrs. J. Anandavalli

For R - 2 : Mr. C. M. Marichelliah Prabhu
Additional Government Pleader

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.)

Mrs. Saranya, learned counsel representing for
Mrs. J. Anandavalli, appears for the first respondent and
Mr. C. M. Marichelliah Prabhu, learned Additional Government Pleader
appears for the second respondent.

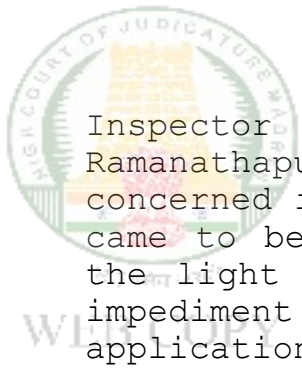


2.The petitioner, in the affidavit filed in support of this writ petition would state among other things that during the month of March 2009, had completed 10th standard in St.Lasalle Higher Secondary School, Tuticorin and during the month of March 2011, completed 12th standard in the same school and he secured 830 marks out of 1200 marks. The petitioner in the year 2011, joined B.Sc., (Computer Science) in Sri Chandrasekharendra Saraswathi Viswa Mahavidyalaya, Enathur, Kanchipuram District and successfully completed the said course in the year 2014. The petitioner got admission in B.L., three years course, for the academic year 2014 - 2015 and successfully completed the said course during the month of June 2017.

3.The petitioner would further state that the second respondent-police on 01.04.2012 has registered a case in Crime No.84 of 2012 for the commission of the offence under Section 436 of IPC and as per the allegations, the defacto-complainant and the petitioner are neighbours and a dispute arose between them on account of cutting of trees and due to the said motive, the petitioner had set fire to the hut belonging to the defacto complainant, which resulted in damage to the tune of Rs.7,000/-. The petitioner was arrested and remanded to judicial custody and came out on bail subsequently and according to the petitioner, at the time of the alleged commission of the offence, he was aged about 19 years. The petitioner would further aver that his father is a Coolie and his mother is a house-wife and he is a first graduate in his family and one of the sister is married and living separately and another sister and brother are studying 12th and 7th standard respectively.

4.The petitioner, after completing the B.L. Degree course submitted an application dated 24.08.2017 in Application No.2347, praying for his enrollment and according to him, under normal circumstances, his application for enrollment would have been positively considered and however, the verification details published in the Tamil Nadu Bar Council Website would show that a case in Crime No.84 of 2012, registered by the second respondent, is pending against him. The petitioner also expressed his grievance that the second respondent did not complete the investigation and filed the final report and hence, came forward to file the present writ petition praying for issuance of writ of mandamus directing the first respondent to enroll him as an Advocate without reference to the case registered in Crime No.84 of 2012.

5.When the matter was listed on 01.11.2017, Mr.A.Muthukaruppan, learned Additional Government Pleader, accepted notice on behalf of the respondents and thereafter, the matter was listed for filing counter. The matter was again listed on 10.01.2018 before this Bench and at that time, the learned counsel appearing for the petitioner has produced an order, dated 07.12.2017 made in CrI.O.P (MD)No.16851 of 2017 (Muthumurugan Vs. The State rep. By the Sub-



Inspector of Police, Rameshwaram Temple Police Station, Ramanathapuram District) in and by which P.R.C.No.18 of 2017 concerned in Crime No.84 of 2012 registered by the second respondent came to be quashed on account of compromise and submitted that in the light of the quashment of the criminal case, now there is no impediment on the part of the first respondent to consider his application for enrollment and prayed for appropriate orders.

6.This Court, at the request made by the learned standing counsel appearing for the first respondent, posted the matter for orders on 23.01.2018. The matter is listed today and the learned standing counsel appearing for the first respondent once again prays for time to get necessary instructions.

7.The learned Additional Government Pleader appearing for the second respondent would submit that after the quashment of the proceedings, in terms of the order, dated 07.12.2017 in CrI.O.P(MD) No.16851 of 2017, the petitioner did not indulge in any criminal activities and as on date, he is having a clear record and the said submission, on instructions, is placed on record.

8.This Court has carefully considered the rival submissions and also perused the materials placed on record.

9.It is not clear from the affidavit filed in support of this writ petition as to whether, the petitioner at the time of submission of his enrollment in Application No.2347 has disclosed about the pendency of the case in Crime No.84 of 2012 registered by the second respondent or not.

10.However, the fact remains that P.R.C.No.18 of 2017 pending on the file of the District Munsif cum Judicial Magistrate, Rameshwaram, Ramanathapuram District concerned in Crime No.84 of 2012 registered by the second respondent came to be quashed on account of the compromise reached between the petitioner and the defacto-complainant.

11.In **Gopakumar B.Nair Vs. Central Bureau of Investigation and another** reported in (2014) 5 SCC 800, the quashment of non-compoundable offence under Section 482 Cr.P.C., on the ground of settlement between the parties, came up for consideration and the Hon'ble Supreme Court of India has taken into consideration the larger Bench decision in **Gian Singh Vs. State of Punjab** reported in **2012 10 SCC 303** equivalent to (2013) 1 SCC Criminal 160 observed as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"11.The decisions in Nikhil Merchan as well as in some other cases, namely, B.S. Joshi Vs. State of Haryana and



Manoj Sharma Vs. State were referred to a larger Bench in Gian Singh for an authoritative pronouncement as to whether in the said cases this Court had "indirectly permitted compounding of non-compoundable offences". The larger Bench hearing the matter in its judgment took the view that:

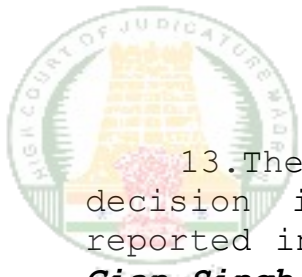
"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction."

Eventually in para 61 the note of caution insofar as heinous and grave offences and offences under special laws, as already noticed, was sounded and it was held that Nikhil Merchant, B.S. Joshi Vs. State of Haryana and Manoj Sharma Vs. State were correctly decided.

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13. The decision in Gian Singh holding the decision rendered in Nikhil Merchant and other cases to be correct is only an approval of the principle of law enunciated in the said decisions ie., that a non-compoundable offence can also be quashed under Section 482 Cr.P.C. On the ground of a settlement between the offender and the victim. It is not an affirmation, for there can be none, that the facts in Nikhil Merchant justified/called for the due application of the aforesaid principle of law. Also, neither Nikhil Merchant nor Gian Singh can be understood to mean that in a case where charges are framed for commission of non-compoundable offences or for criminal conspiracy to commit offences under the PC Act, if the disputes between the parties are settled by payment of the amounts due, the criminal proceedings should invariably be quashed. What really follows from the decision in Gian Singh is that though quashing a non-compoundable offence under Section 482 Cr.P.C, following a settlement between the parties, would not amount to circumvention of the provisions of Section 320 of the Code, the exercise of the power under Section 482 will always depend on the facts of each case. Furthermore, in the exercise of such power, the note of caution sounded in Gian Singh must be kept in mind. This, in our view, is the correct ratio of the decision in Gian Singh."

12. Under sub-Section 8 of Section 320 of Cr.P.C., "the composition of an offence under this Section shall have the effect of an acquittal of the accused with whom the offence has been compounded".



13. The Honourable Supreme Court of India, in its earlier decision in **State of Rajasthan Vs. Shambhu Kewat and another** reported in (2014) 4 SCC 149, has also taken into consideration the **Gian Singh's case** (cited supra) and observed as follows:-

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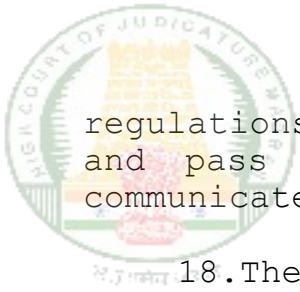
"8. We may point out that in *Gian Singh*, this Court has held that quashing of offence or criminal proceedings on the ground of settlement between an offender and the victim is not the same thing as compounding of offences. This Court also held that the power of compounding of offences conferred on a court under Section 320 Cr.P.C. is materially different from the power conferred under Section 482 for quashing of criminal proceedings by the High Court. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 Cr.P.C. And the Court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing a criminal proceeding or criminal complaint under Section 482 Cr.P.C. is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment."

14. In effect, the quashment of the proceedings in respect of non-compoundable offence, on account of compromise reached between the concerned accused and the defacto-complainant, in the considered opinion of this Court, may not have an effect of acquittal, but however, the criminal proceedings insofar as the petitioner came to be quashed in the light of the compromise reached between him and the defacto-complainant, vide order dated 07.12.2017 in CrI.O.P(MD) No.16851 of 2017.

15. The learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent, on instructions, also made a submission that after the quashment of the proceedings, the petitioner did not involve himself in any of the criminal activities or arrayed as an accused in any criminal case and the said submission, on instructions, is also placed on record.

16. At this juncture, the learned counsel appearing for the petitioner would submit that he may be permitted to withdraw his earlier application and submit a fresh application for enrollment, disclosing about the said case as well as the quashment of the same, vide order dated 07.12.2017 in CrI.O.P(MD) No.16851 of 2017.

17. This Court heard the submission of the learned standing counsel appearing for the first respondent also. If the Rules permit, the withdrawal of the application and submission of the fresh application of the petitioner, he may do so and upon receipt of the said application, the first respondent is directed to consider the same, in accordance with the relevant norms and



regulations, and process the said application in accordance with law and pass appropriate orders, as expeditiously as possible and communicate the decision taken to the petitioner.

18. The writ petition stands disposed of accordingly. No costs.

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Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai - 104.
2. The Inspector of Police,
Temple Police Station,
Rameswaram,
Ramanathapuram District.

Copy To:

1. The Bar Council of India,
New Delhi.
2. The Superintendent of Police,
Ramanathapuram District.

+ 1 CC TO M/s.J.ANANTHAVALLI, ADVOCATE IN SR No. 45949
+ 1 CC TO M/s.G.M.LAW OFFICE, IN SR No. 45945

PS/MR

TE/KKR/SAR-4 : 14/02/2018 : 6P/7C

W.P (MD) No.20025 of 2017
02.02.2018