

HON'BLE SRI JUSTICE P. KESHA RAO

I.A.No.1 of 2018 AND CRIMINAL REVISION CASE No.1290 of 2011

AND

I.A.No.1 of 2018 AND CRIMINAL REVISION CASE No.1291 of 2011

COMMON ORDER:

Heard the learned counsel for the petitioners and the 2nd respondent and the learned Public Prosecutor appearing for the 1st respondent State.

The present revision case is filed challenging the orders passed in CrI.M.P.Nos.262 and 528 of 2011 in C.C.No.394 of 2010 dated 10.05.2011 on the file of the IV Additional Chief Metropolitan Magistrate, Visakhapatnam, dismissing the petitions filed under Section 239 Cr.P.C., to discharge the petitioners for the offences against which they are charged.

The facts in brief are that the petitioners are the tenants in respect of the premises bearing No.51-1-4, Seethammadhara admeasuring 11,000 square yards. A dispute arose with regard to handing over of a part of the site for road widening purpose leading to initiation of the present criminal prosecution against the petitioners. That apart, relying on the terms and conditions, particularly, relating to the renewable clause, the petitioners filed O.S.No.212 of 2007 for specific performance of the renewable clause against the 2nd respondent herein on the file of the VII Additional District Judge, Visakhapatnam. On the other hand, the 2nd respondent filed R.C.C.Nos.41 and 49 of 2007 for eviction of the petitioners from the premises in question. Against the interim order passed in the civil suit, a revision came to be filed in this

Court vide C.R.P.No.2714 of 2017. During the pendency of the above said revision petition, the petitioners as well as the 2nd respondent compromised the matter pursuant to which possession of the premises was delivered to the 2nd respondent and no further disputes are pending with regard to the suit premises. As far as the present case is concerned, on the complaint lodged by the 2nd respondent, the petitioners have been charged for the offence under Sections 406, 409, 417, 418, 420, 423, 427 read with Section 34 IPC vide C.C.No.394 of 2010. During the pendency of the said C.C., the petitioners filed CrI.M.P.Nos.262 and 528 of 2011 under Section 239 Cr.P.C., to discharge them for the above said offences. After hearing, the said petitions came to be dismissed by orders dated 10.05.2011. Aggrieved by the same, the present revision cases are filed.

During the pendency of the revision case, since the disputes have already been compromised and possession has also been delivered to the 2nd respondent, who is admittedly the owner of the premises in question, interlocutory applications vide I.A.No.1 of 2018 have been filed under Section 320 read with Section 482 Cr.P.C., in both the revision cases seeking permission of this Court to compound the offence in C.C.No.394 of 2010 originally on the file of the IV Additional Chief Metropolitan Magistrate, Visakhapatnam, and presently transferred and re-numbered as C.C.No.63 of 2018 on the file of the III Additional Junior Civil Judge-cum-III Additional Metropolitan Magistrate, Visakhapatnam. In the said applications, it is stated that during the pendency of

C.R.P.No.2714 of 2017 all the accused entered into a settlement with the 2nd respondent with a view to give quietus to the litigation. As per the settlement, the parties entered into a memorandum of understanding with the 2nd respondent on 18.09.2017 finally settling the disputes between them. In terms of the said memorandum of understanding, proceedings in C.C.No.394 of 2010 (re-numbered as C.C.No.63 of 2018) also are liable to be quashed by way of compounding the offence.

Learned counsel appearing for the 2nd respondent admitted the compromise and he has also submitted that there is no objection if the proceedings initiated against the petitioners in the above said C.C. are quashed.

Learned Public Prosecutor appearing for the 1st respondent State raised an objection with regard to the offence under Section 409 IPC, which is non-compoundable.

Learned counsel appearing for the petitioners relied on the judgment of the Apex Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Karmur and others vs. State of Gujarat and another**¹, wherein the Apex Court, while dealing with the compounding of offences, framed broad principles which emerge from the precedents on the subject and held that the offences as distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned and the criminal cases

¹ AIR 2017 SC 4843

involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute. Therefore, he sought permission of this Court to permit the petitioners to compound the offence under Section 409 IPC.

Having heard all the counsel and from the perusal of the material on record, the only point that arises for consideration is:

Whether the offence under Section 409 IPC can be compoundable?

Admittedly, the petitioners have been charged for various offences which include offence under Section 409 IPC. The genesis for prosecuting the petitioners for the above said offence is with regard to handing over of a part of the site to the concerned authority for the purpose of road widening without the consent of the original owner i.e., the 2nd respondent. However, the 2nd respondent raised a dispute with regard to the ownership and capacity of the petitioners to handover the said site, but subsequently, they have compromised all the disputes, which include the above said dispute leading to closure of O.S.No.212 of 2007 and R.C.C.Nos.41 and 49 of 2007 leaving open the present revision cases. When the parties have already settled all the disputes and the basis for launching the criminal prosecution against the petitioners is an off-shoot of the original litigation of handing over of a part of the site for road widening in O.S.No.212 of 2007, this Court is of the opinion that even if the proceedings are

allowed to continue, the same may amount to abuse of process of the Court since the possibility of a conviction is remote and the continuation of criminal proceedings would cause oppression and prejudice.

In these circumstances, this Court is of the opinion that the parties may be allowed to compound the offence in the peculiar facts and circumstances of the case.

Accordingly, both the interlocutory applications vide I.A.No.1 of 2018 are allowed. Consequent to the allowing of the applications, the criminal revision case is allowed, setting aside the orders passed in CrI.M.P.Nos.262 and 528 of 2011 in C.C.No.394 of 2010 (re-numbered as C.C.No.63 of 2018) on the file of the III Additional Junior Civil Judge-cum-III Additional Metropolitan Magistrate, Visakhapatnam, and the petitioners are discharged for the offence under Sections 406, 409, 417, 418, 420, 423, 427 read with 34 IPC.

Miscellaneous petitions, if any, stand closed.

P. KESHAVA RAO, J

Date: 08.10.2018.

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