

HON'BLE SRI JUSTICE G.SHYAM PRASAD

Crl.R.C.Nos. 388 of 2017, 2791 and 2977 of 2016
and Crl.P.No. 2942 of 2017

COMMON ORDER :

Criminal Revision Case No.388 of 2017 is arising out of the common order passed in criminal R.P.No.12 of 2016, and Crl.M.P.No.3780 of 2016 allowing the revision petition, directing both parties to attend the learned trial Court on 18.01.2017, and the office was directed to transmit the entire record to the learned trial Court before 18.01.2017.

The petitioners 1 and 2, and the respondent No.1 have filed a Joint Memo dated 12.11.2018 for compromising in this revision petition, and the respondent No.1 has stated in the Joint Memo that he has no objection for allowing this revision, in view of the amicable settlement arrived between the parties. The learned Public Prosecutor, representing the 2nd respondent State has reported no objection for recording the compromise and allowing the revision petition Criminal Revision Case No.388 of 2017.

Criminal Revision Petition No. 12 of 2016 filed by the de facto complainant in C.C.No.1115 of 2011 challenging the impugned order passed in a discharge petition in criminal MP.No.101 of 2015 by the trial court vide order dated 16.05.2015 discharging the accused respondent Nos.2 and 3 therein.

Criminal M.P.No.3780 of 2016 is filed pending the revision petition for receiving additional evidence under Section 391 Cr.P.C.

In the present case, both the parties have compromised the matter and filed a Joint Memo stating that the respondent No.1 has no objection for allowing CrI.R.C.No.388 of 2017 by setting aside the orders passed by the trial Court. In view of the compromise of the parties and filing of Joint Memo, the Criminal Revision Case No.388 of 2017 is allowed, the order passed by the Special Judge for Economic Offences at Hyderabad, dated 29.12.2016 in Criminal R.P.No.12 of 2016 and Criminal MP.No.3780 of 2016 is set aside.

I.A.(SR).NO.94066 of 2018 is filed by the petitioner/de facto complainant in Criminal R.C.No.388 of 2017 seeking permission to compromise with the petitioners in C.C.No.115 of 2011 on the file of XIV ACMM, Hyderabad, with the respondents 1 and 2. The petitioner in C.C.No.226 of 2016 on the file of XIV Metropolitan Magistrate at Cyberabad has stated that he lodged a report basing on which C.C.No.115 of 2011 was numbered on the file of XIV ACMM, Hyderabad, for the offences under Sections 420, 406, 468 and 120-B IPC. The affidavit of the 1st respondent/de facto complainant in Criminal Revision Case No.388 of 2017 is filed.

Criminal R.C.No.2791 of 2016 is filed by the State of Telangana, represented by its Public Prosecutor, Hyderabad, aggrieved by the orders passed in Criminal Revision Petition No.138 of 2016, dated 25.07.2016

allowing the Criminal Revision Petition filed under Section 397 Cr.P.C., by setting aside the orders passed by the III Additional Chief Metropolitan Magistrate at Hyderabad in Criminal MP.No.479 of 2016 in C.C.No.742 of 2012, dated 13.04.2016 dismissing the petition to discharge the accused against whom charge sheet is filed under Sections 420, 467, 468, 471 and 474 of IPC. The contention of the prosecution is that the Receipt and the Letter of Undertaking dated 04.08.2009 said to have been submitted by the accused in the Court is a forged document and accordingly the same had been proved during course of investigation, as such, the police rightly filed charge sheet and it is for the accused to explain as to how the said document came into existence. The police have registered a case in Crime No.265 of 2010, under sections 420, 467, 468, 471, 474 IPC of Banjara Hills Police Station on a complaint lodged by the de facto complainant contending that the receipt was forged. The contention of the appellant-State is that the appellate Court committed a grave error in allowing the Criminal Revision Petition by setting aside the order of the lower Court dismissing the petition to discharge the accused.

Criminal Petition No.2942 of 2017 is arising out of the order dated 23.08.2013 passed in Criminal M.P.No.1667 of 2013 in C.C.No.1115 of 2011 on the file of XIV Additional Chief Metropolitan Magistrate at Hyderabad. The said petition was filed by the Inspector of Police, PS Panjagutta, seeking permission to reopen the case and to finalise investigation. The said petition was dismissed by the learned XIV Additional Chief Metropolitan Magistrate at Hyderabad, on merits.

Subsequently, the petitioners/Accused Nos.1 and 2 in C.C.No.1115 of 2011 have filed a Joint Memo along with the affidavit of 1st respondent/ de facto complainant stating that they compromised the matter and, therefore, sought for dismissal of the petition as withdrawn.

On consideration of the nature of the cases pending against each other, it is obvious that a civil transaction is the root cause for all these Criminal Cases. The parties have compromised the matter and filed a Joint Memo of compromise.

The learned counsel for petitioner and respondents, and the learned Public Prosecutor submits that since the parties do not want to prosecute their cases in view of the compromise entered between them, the cases may be dismissed as withdrawn, and the case pending against the accused Nos.1 and 2 may be closed.

Admittedly, the main offence under Section 420 IPC alleged against the petitioners is compoundable in nature. The other offences alleged are arising out of the main offence.

The learned Public Prosecutor fairly submitted that the offence under Section 420 IPC, which is the main offence that can be compounded with the permission of this Court under Section 320(8) of Cr.P.C. may be compounded. Since the parties have compromised the matter, permission can be accorded for compounding the other offences, which are arising out of the main offence.

Petitioners – A1 and A2 have filed CrI.R.C.No. 388 of 2017 along with a Joint Memo of Compromise, which has been signed by both the parties and their counsels. The petitioners have stated in the Joint Memo of Compromise as follows:

- i) C.C.No. 1115 of 2011 on the file of the Court of 14th Additional Chief Metropolitan Magistrate, Hyderabad, under Sections 420, 406 and 468 read with 120-B IPC in which the petitioners are the accused and the 1st respondent is the *de facto* complainant in which the petitioners preferred a Discharge Application vide CrI.M.P.No. 1014 of 2015 dated 16.05.2015, which was allowed, duly discharging them, aggrieved by which, the 1st respondent preferred CrI.R.P.No. 12 of 2016 on the file of the Court of Special Judge for Economic Offences, Hyderabad which was allowed setting aside the said Discharge Order in favour of the petitioners, aggrieved by which, the petitioners preferred the present CrI.R.C.No. 388 of 2017 on the file of this Hon'ble Court.
- ii) The petitioners preferred C.C.No. 742 of 2012 under Sections 420, 406 and 468 read with 120-B IPC on the file of the Court of the 3rd Addl. Chief Metropolitan Magistrate, Hyderabad in which the 1st respondent is the accused who filed a Discharge Application vide CrI.M.P.No. 479 of 2016 which stood dismissed, aggrieved by which, he preferred CrI.R.P.No. 138 of 2016 on the file of the Court of the 3rd Addl. M.S.J., Nampally, Hyderabad, which stood allowed duly discharging him, aggrieved by which, the petitioners herein preferred the present CrI.R.C.No. 2977 of 2016 on the file of this Hon'ble Court.

- iii) The State also preferred a Revision vide CrI.R.C.No. 2791 of 2016 on the file of this Hon'ble Court challenging the very same order in CrI.R.P.No. 138 of 2016.
- iv) The 1st respondent herein preferred C.C.No. 1115 of 2011 on the file of the Court of 14th A.C.M.M., Hyderabad under Sections 420, 406 and 468 read with 120-B IPC in which the petitioners are the accused, and the State filed a CrI.M.P.No. 1667 of 2013 for reinvestigation, which stood dismissed, aggrieved by which, the petitioners preferred the present CrI.P.No. 2942 of 2017.
- v) The petitioners preferred O.S.No. 961 of 2014 on the file of the Court of 14th Addl. District Judge, Ranga Reddy in which the 1st respondent is the defendant which is a money suit.
- vi) The petitioners also filed a Suit vide O.S.No. 483 of 2009 on the file of the Court of Hon'ble XIII Additional Chief Judge-cum-F.T.C. City Civil Court, Hyderabad which is also a money suit which stood dismissed, aggrieved by which the petitioners preferred A.S.No. 629 of 2017 on the file of this Hon'ble Court.

The petitioners and the 1st respondent – *de facto* complainant have stated in the Joint Memo dated 12.11.2018 that at the intervention of the elders, they have amicably settled the disputes between them and submit that CrI.R.C.No. 388 of 2017 may be allowed and CrI.R.C.No. 2977 of 2016 and CrI.P.No. 2942 of 2017 may be dismissed as withdrawn.

Considering the submissions of the learned counsel for the petitioners and the learned Public Prosecutor and in view of the provision under Section 320(2) and (8) Cr.P.C., this Court accords

permission for compounding the offence under Section 420 IPC, and since the other offences are arising out of the main offence, the following order is passed.

The dispute involved has overtones of a civil dispute with certain civil facets. Continuance of criminal proceedings after the compromise arrived at between the parties would be a futile exercise.

In this regard, it is pertinent to note that in NIKHIL MERCHANT vs. C.B.I. & ANR.¹, the Apex Court in paras-23 and 24 observed thus :

“23. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

24. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.”

¹ AIR 2009 SC 428

In C.B.I. vs. DUNCANS AGRO INDUSTRIES LTD.², the Apex Court in para-29 observed thus :

“29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the concerned companies. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further. In our view, proceeding further with the complaints will not be expedient. In the special facts of the case, it appears to us that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals.”

In C.B.I., A.C.B., MUMBAI vs. NARENDRA LAL JAIN & ORS.³, the Apex Court in paras-10 and 11 observed thus :

10. In the present case, as already seen, the offence with which the accused-respondents had been charged are under Section 120-B/420 of the Indian Penal Code. The civil liability of the respondents to pay the amount to the bank has already been settled amicably. The terms of such settlement have been extracted above. No subsisting grievance of the bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120- B is not. To the latter offence the ratio laid down in B.S. Joshi (supra) and Nikhil Merchant (supra) would apply if the facts

² AIR 1996 SC 2452

³ (2014) 5 SCC 364

of the given case would so justify. The observation in Gian Singh (supra) (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120B IPC.

11. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 Cr.P.C. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 Cr.P.C. it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr.P.C.”

In REVISION vs. BINEESH⁴, the Kerala High Court in para-8 observed thus :

“8. Now, the question whether CrI.M.A.No.2665 of 2012 which carries the prayer for permission to compound the offence is to be allowed or not. The policy of law embodied in section 320 Cr.P.C is to promote friendliness between the parties and to restore peace between them. In this case, the compromise duly verified by the parties that was brought on record through the said joint application would undoubtedly show that the second respondent, the person on whom hurt was caused, has volunteered to compound the offence with the revision petitioners. I am convinced that no rancour now rests in their hearts and as such, it is a fit case to grant permission to compound the offence. Resultantly, the offence under section 324 IPC against the revision petitioners is compounded and the conviction and sentence against them passed in C.C.No.1140 of 2008 dated 31.8.2009 of the Judicial First Class Magistrate Court-I, Chengannur and confirmed by the judgment in CrI.A.No.415 of 2009 of the Court of the Additional District & Sessions (Ad-Hoc) Judge, Mavelikkara are set aside. The composition of the offence shall have the effect of an acquittal of the revision petitioners

⁴ CrI.R.P.No.380 of 2012, dated 06.06.2012

with whom the offence has been compounded in terms of sub-section (8) of section 320 of Cr.P.C. The bail bonds, if any, will stand cancelled. If the revision petitioners had deposited any amount pursuant to the order dated 6.3.2012, the same shall be refunded to them on proper application.”

In REVISION vs. BY ADVS. SRI A. JANI (KOLLAM)⁵, the Kerala High Court in para-8 observed thus :

“8. When the matter is in revision before this Court, this Court can exercise the powers under Section 320(6) Cr.P.C., Cr.L.R.P.No.352 of 2016 to permit any person to compound any offence, when such person is competent to compound under Section 320 Cr.P.C. When the matter has been compounded, by the 2nd respondent, who is the defacto complainant in the case before the court below, the said composition is only to be accepted. The 2nd respondent is permitted to compound the offence. The affidavit filed by the 2nd respondent is recorded. The offence is treated as compounded. The composition of the offence has the effect of acquittal within the meaning of Section 320(8) Cr.P.C.”

This is a fit case where the provisions of Section 482 of Cr.P.C. can be invoked to avoid abuse of the process of law in civil disputes.

In pursuance of the letters addressed by Mr. N. Ravi Prasad, to the Registrar (Judicial) on 18.11.2018 and 20.11.2018 seeking to post Criminal Revision Case No.2977 of 2016 and Criminal Revision Case No.2942 of 2017 along with Criminal Revision Case No.388 of 2017 for withdrawal, and Mr. S.R. Sanku, learned counsel representing the opposite party takes notice of the aforementioned letters, the matters are posted and heard in the presence of both the parties and their counsel and the learned Public Prosecutor.

⁵ Cr.L.R.P.No.352 of 2016, dated 16.03.2016

The parties of both sides agreed for the terms of Compromise entered into by them in the Joint Memo dated 12.11.2018 filed into the Court. The learned counsel for both the parties, and learned Public Prosecutor had taken notice of the said Joint Memo of Compromise. The learned Public Prosecutor has not opposed for the said Compromise and withdrawal of the above matters by the parties by way of filing a Joint Memo. Thus, Joint Memo of Compromise is recorded and I.A.(SR).No.94066 of 2018 is allowed.

Consequently Criminal Revision Case No.388 of 2017 is allowed setting aside the Common Order dated 29.12.2016 in CrI.R.P.No.12 of 2016 passed by the trial Court, Criminal Revision Case No. 2977 of 2016 and Criminal Petition 2942 of 2017 are dismissed as withdrawn and Criminal Revision Case No.2791 of 2016 is closed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. SHYAM PRASAD, J

19.12.2018

Bcj/Msr