

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

I.A Nos.2 & 3 OF 2018
IN/AND
CRIMINAL PETITION NO.9968 OF 2018

ORDER:

I.A Nos.2 & 3 OF 2018

These miscellaneous petitions are filed seeking permission of this Court to record compromise and compound the offences in C.C.No.59 of 2018 on the file of Judicial First Class Magistrate at Mahabubnagar, for the offences punishable under Sections 365, 342, 323, 504, 506 r/w 34 IPC.

The second respondent filed a complaint before the police. On the strength of the complaint, crime was registered and the police issued F.I.R. At the crime stage, both the parties entered into compromise, settled the claims against one another and decided not to proceed against one another, thereby, resolved the dispute amicably.

Both, the petitioners and second respondent are present and they are identified by their respective counsel and produced Photostat copies of Aadhar cards to prove their identity.

The genesis for the crime is that, while the complainant was proceeding towards agricultural fields, he found the petitioners attending a feast by listening songs and consuming liquor. When the second respondent cautioned the petitioners, they picked up quarrel and thereby, abducted the second respondent to municipal park at Teachers colony and confined him for three hours. Hence, basing on the complaint, the police registered the above crime.

It appears from the record that, the second respondent is not abducted. But, taking him to park and confining him for few hours

would not fall within the definition of abduction or kidnap *prima facie*.

Apart from that, when the terms of compromise are explained in vernacular language, they are admitted to be true and correct. Further, it is now submitted that, both parties have voluntarily entered into compromise due to intervention of elders and well-wishers and they wanted to lead peaceful life in future.

In “**Gian Singh v. State of Punjab and Anr.**”¹ the Apex Court held that depending upon the facts and circumstances of each case, the High Court can exercise its inherent power under Section 482 Cr.P.C., however before exercising such power, High Court must have due regard to nature and gravity of crime and its social impact. It is further held that heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., could not be fittingly quashed even though victim or victim’s family and offender have settled dispute. Such offences were not private in nature and have serious impact on society. Similarly any compromise between victim and offender in relation to offences under special statutes like Prevention of Corruption Act or offences committed by public servants while working in that capacity etc; could not provide for any basis for quashing criminal proceedings involving such offences.

In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur v. State of Gujarat**², the Full Bench of the Supreme Court summarised the following propositions:

¹ (2012) 10 SCC 303

² ARI 2017 SC 4843

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) 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;

(viii) Criminal cases 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;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote

and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and

(ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

Hence, by applying the guideline nos. (iii), (v) & (vi) laid down by the Supreme Court in the above judgments to the present facts of the case and leave is granted to compound the offence to maintain peace and harmony between the parties. Therefore, I find that the compromise is voluntary, in the interest of both parties and permission is granted to compound the offence. Hence, compromise is recorded in terms of the joint memo filed along with these petitions. Accordingly, these petitions are ordered.

CrI.P.NO.9968 OF 2018

In view of the orders passed by this Court in I.A Nos.2 & 3 OF 2018, this petition is allowed and the proceedings in C.C.No.59 of 2018 on the file of Judicial First Class Magistrate at Mahabubnagar, are hereby quashed against the petitioners.

Registry is directed to annex a copy of joint memo filed by both the parties, to this order.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.09.2018
SP