

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 855 of 2018

1. Ishwar S/o Shri Bisaru Ram Aged About 43 Years R/o Village Baihar, (Arang), District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Nirmala Devi W/o Shri Mansukh Aged About 60 Years R/o Village Baihar, (Arang), District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. Mansukh S/o Shri Bisaru Ram Aged About 47 Years R/o Village Baihar, (Arang), District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
4. Pushkar Raj S/o Shri Bisaru Ram Aged About 22 Years R/o Village Baihar, (Arang), District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
5. Ravikant S/o Shri Mansukh Aged About 22 Years R/o Village Baihar, (Arang), District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- **Petitioners**

Versus

1. State Of Chhattisgarh Through District Magistrate, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Loknath Sahu S/o Late Ramji Aged About 41 Years R/o Village Serikhedi, Post Mandir Hasoud, Tahsil And District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. Suresh Sahu S/o Late Ramji Aged About 36 Years R/o Village Serikhedi, Post Mandir Hasoud, Tahsil And District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri Y.C. Sharma, Advocate.
For Respondent/State	:	Shri Aditya Sharma, P.L.
For Respondents	:	Shri Sunny Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

22/01/2019

Heard.

1. The present petition is against the order dated 02.04.2018 wherein an application under Section 320 sub-section (8) of Cr.P.C. was partly allowed, the offence under Section 420 IPC was compounded but for the offence under Sections 467, 468, 471 read with Section 34 of IPC prayer to compound the offence was disallowed.

2. The facts are on a complaint made by the respondents No. 2 and 3

namely Loknath Sahu and Suresh Sahu the offence under Section 420, 467, 468, 471 read with Section 34 of IPC was registered on 28.03.2018. Subsequently, after registration of the crime bearing No. 89/2008 the charge-sheet was filed. During the pendency of the criminal case the complainant compounded the offence. The application was filed before the Court below. The same was partly allowed therefore, this instant petition.

3. Learned counsel for the petitioner submits that the very nature of the case was civil in nature and the background would be one Pushkar Raj Sahu and Ravikant Sahu have sold the property to one Suresh Jain by sale deed dated 16.01.2001 which was done through intervention of the Court. Subsequently, Suresh Jain has sold the property to the complainant Loknath Sahu and Suresh Sahu. Since the same dispute was inter-se between the parties, another civil suit was filed by Vishnu against the petitioners herein whereas the compromise decree was drawn and on the basis of the decree the land was mutated in the name of the petitioners who sold the property to others. It is contended that one civil suit was also filed by complainant Loknath Sahu and Suresh Sahu in respect of the property concerned wherein after mediation the compromise has been effected. According to the agreement which was entered into between the parties in pursuance thereto the complainant do not want to continue the prosecution as the civil suit has already been compromised.

4. Counsel for the complainant is present in the Court who support the contention of the petitioner.

5. Per contra, learned State counsel opposes the submissions made by counsel for the petitioner.

6. Perused the documents and statement recorded in this case.

7. The record would show that the statement of Loknath Sahu and Suresh Sahu has been recorded before the Additional Registrar (Judicial) wherein they have stated that they do not want to further prosecute their complaint / criminal case bearing No. 183/2012 which appended from the

Criminal Case No. 89/2008 pending adjudication before the JMFC, Raipur.

8. With respect to compounding the offence, Hon'ble the Supreme Court in ***Gian Singh v. State of Punjab & Another reported in (2012) 10 SCC 303*** has laid down the following principles :

“61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot

provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

9. Further, in case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors.** in Criminal Appeal No.1723 of 2017 their Lordship again reiterated the view taken in case of **Gian Singh** (supra) and has laid down the following propositions :

“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(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 recognizes 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.

10. Taking into consideration the submissions made by the complainant No. 2 and 3 and the photocopy of the decree of compromise placed on record in which the parties have inter-se settled the dispute and do not want to further prosecute the complaint. The complaint appears to be private in nature arising out of the land dispute. Consequently, even if the prosecution is continued it would hardly have effect and in all remoteness only futile trial would be conducted ending into acquittal.

11. Taking into consideration the background that the civil suit has been compromised and following the aforesaid principles laid down by the Supreme Court, I am inclined to quash the proceedings of the Criminal Case No. 183/2012 pending before the JMFC, Raipur against the petitioners. Consequently, the charges under Sections 467, 468, 471 read with Section 34 of IPC shall stand quashed and the petitioners are acquitted of the charges.

12. Accordingly, the petition is allowed.

Sd/-

(Goutam Bhaduri)
JUDGE