

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.16055 and 16349 of 2017 & 21025 of 2018
and Crl.M.P.Nos.11413 and 11414 of 2018

1.A.M.Mohan
2.A.Valluvan
3.N.Senthamarai
4.M.Shobana ... Petitioners in Crl.O.P.No.16055 of 2017

K.N.Sudhakar ... Petitioner in Crl.O.P.No.16349 of 2017

1. M.Rajeshwari
2. M.Velu
3. M.Ravi
4. L.S.Valli
5. Sankar
6. A.Babu
7. M.Chellappan
8. N.Vijaya
9. K.N.Shanmugam
10.N.Shanmugam
11.M.Venkatesan
12.Vijayakumar ... Petitioners in Crl.O.P.No.21025 of 2018

Vs.

1.State Rep by
The Deputy Superintendent of Police,
Counterfeit Currency Wing,
Crime Branch CID, Chennai 600 008

2.S.Nagarajan ... Respondents in Crl.O.P.Nos.16055 of 2017
and 21025 of 2018

1.The Sub Inspector of Police,
City Crime Branch,
Team IV, EDF Wing II,
Vepary, Chennai - 600 007

2.K.Nagarajan ... Respondents in Crl.O.P.No.16349 of 2017

PRAYER in Crl.O.P.No.16055 of 2017: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and subsequently quash the charge sheet vide CC.No.6084 of 2016 pending before the XI Metropolitan Magistrate, Saidapet in Crime No.4 of 2014 dated 11.11.2016 on the file of the 1st respondent herein.

PRAYER in Crl.O.P.No.16349 of 2017: Criminal Original Petition filed under Section 482 Cr.P.C. praying to quash the FIR in Crime No.184 of 2014 on the file of the City Crime Branch, Team IV, EDF Wing II, Vepery, Chennai.

PRAYER in Crl.O.P.No.21025 of 2018: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the charge sheet filed by the first respondent herein in CC.No.6084 of 2016 on the file of the XI Metropolitan Magistrate, Saidapet insofar as the petitioners herein.

For Petitioners : Mr.D.O.Kaviyanathan
in Crl.O.P.Nos.16055 of 2017 for M/s.Nathan and Associates
and 16349 of 2017

For Petitioners in Crl.O.P.No.21025 of 2018 : Mr.S.Sathyaseelan
for Mr.T.Chandrasekaran

For Respondents : Mr.M.Mohamed Riyaz,
in Crl.O.P.Nos.16055 of 2017 Additional Public Prosecutor
and 16349 of 2017 for R1

: Mr.T.T.Ravichandran for R2

For Respondents : Mr.M.Mohamed Riyaz,
in Crl.O.P.No.21025 of 2018 Additional Public Prosecutor
and 16349 of 2017 for R1

: Mr.T.T.Ravichandran for R2

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos.6084 of 2016 pending on the file of the learned XI Metropolitan Magistrate, Saidapet and to quash the FIR in Crime No.184 of 2014 on the file of the City Crime Branch, Team IV, EDF Wing II, Vepery, Chennai.

2. The respective learned counsels for the petitioners and the learned counsel for the respondent submitted that the entire matter has been settled between the parties by way of amicable settlement. To that extent they also filed joint memo of compromise in all the OP's. Therefore, they sought for quashment of the entire proceedings in C.C.Nos.6084 of 2016 and Crime No.184 of 2014 on compromise.

3. The learned Additional Public Prosecutor appearing for the first respondent submitted that the case has been registered as against the petitioners for the offence under Sections 406, 420, 465, 467, 471, 419 and 420 I.P.C. r/w 120(b) I.P.C. and 114 I.P.C. as against the petitioners and charged for the same offences and filed final report. The same has been taken cognizance in C.C.No.6084 of 2016 on the file of the learned XI Metropolitan Magistrate, Saidapet. He further submitted that the petitioners committed very grave and serious offence. He submitted the particulars of forged property document of the original owner and accused as follows:

S. No	PROPERTY PARTICULARS	ORIGINAL OWNER	FORGED BY ACCUSED
1	Santhavellore Survey No.536/6 - 25 cents	Government Land	A3-Rajeswari/ Forged Power of Attorney Registered in Anna Nagar Sub Registry in Doc.No.2172/07 dt. 09.05.2007
2	Santhavellore Survey No.558/17,526/11-19 cents	Vijayakumari, W/o.Pandu Rangan, Ambattur	A3-Rajeswari/ Forged Power of Attorney Registered in Anna Nagar Sub Registry in Doc.No.2172/07 dt. 09.05.2007
3	Santhavellore Survey No.451/6 - 30 cents	Canal Government Land	- A7-Sankar & A6 Valli, W/o.Sankar / Forged Power of Attorney Registered in Anna Nagar Sub Registry in Doc.No.2882/07 dt. 30.07.2007

S. No	PROPERTY PARTICULARS	ORIGINAL OWNER	FORGED BY ACCUSED
4	Santhavellore Survey No.621/8 - 52 cents	Canal Government Land	A8 Babu / Forged Power of Attorney Registered in Anna Nagar Sub Registry in Doc.No.2916/07, dt. 03.07.2007
5	Santhavellore Survey No.449/7 - 72 cents	Kamatchi, W/o.Thangavel, Kandigai Village Sriperumbudur	A9 Chellappan/ Forged Power of Attorney Registered in Anna Nagar Sub Registry in Doc.No.3477/07, dt. 23.08.2007
6	Santhavellore Survey No.481/4 - 47 cents	Kumaresan S/o Nataraja Naicker	A10 N.Vijaya & A11 Shanmugam / Forged Power of Attorney Registered in Villivakkam Sub Registry in Doc.No.1971/07, dt. 28.08.2007
7	Santhavellore Survey No.518/8 - 42 cents	Arasu S/o Venkatesa Udaiyar, Maduravoyal	A13 Venkatesan/ Forged Power of Attorney Registered in Villivakkam Registry in Doc.No.1977/07, dt. 28.08.2007
8	Santhavellore Survey No.467/2A, 467/2B & 467/6 - 101 cents	Janakiraman	A14 Vijayakumar/ Forged Power of Attorney Registered in Villivakkam Registry in Doc.No.2355/07, dt. 12.10.2007
9	Santhavellore Survey No.463/4 - 26 cents	Nagappan S/o. Kuppu Naickanpettai Chennai	A12 Shanmugam/ Forged Power of Attorney Registered in Anna Nagar Sub Registry in Doc.No.1971/07, dt. 28.08.2007

S. No	PROPERTY PARTICULARS	ORIGINAL OWNER	FORGED BY ACCUSED
10	Santhavellore Survey No.467/1 - 51 cents	Rajeswari W/o Arunachalam	A3 Rajeswari / Forged Power of Attorney Registered in Villivakkam Registry in Doc.No.2006/07, dt. 30.08.2007
11	Santhavellore Survey No.461/3 - 47 cents	Original Owner: Neelambal W/o Ekambaram Present Owner: Sankar S/o Nataraja Naicker	Neelambal @ Neelavathy / Forged Power of Attorney Registered in Villivakkam Registry in Doc.No.1969/07, dt. 28.08.2007

4. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Bhagyan Das Vs. The State of Uttarakhand & Anr. in Crl.A.No.465 of 2019 dated 11.03.2019 and vehemently opposed the quashment of the entire proceedings.

5. Heard the respective learned counsels for the petitioners and the learned Additional Public Prosecutor for the first respondent.

6. The petitioners are charged for the offence under Sections 406, 420, 465, 467, 471, 419 and 420 I.P.C. r/w 120(b) I.P.C. and 114 I.P.C. and the same has been taken for cognizance in C.C.6084 of 2016 on the file of the learned XI Metropolitan Magistrate, Saidapet. Now the petitioners have entered into compromise with the second respondent defacto complainant and also filed joint compromise memo before this Court. All the petitioners as well as the defacto complainant are present today. This court also enquired the parties about the compromise and parties agreed for compromise and on their consent joint compromise memo entered between them. The second respondent defacto complainant also has no objection to quash the entire proceedings since the matter has been settled between them. The learned Additional Public Prosecutor objected the quashment of the criminal proceedings on compromise memo on the ground that the petitioners committed serious offence by forging the private as well as the Government property documents and executed power of attorney. In this regard, he relied upon the judgment passed in the case of Bhagyan Das Vs. The State of Uttarakhand & Anr. in Crl.A.No.465 of 2019 dated 11.03.2019,

wherein it is held as follows:

"10. Having heard the learned counsel on both sides we have perused the impugned judgment and also other material placed on record. It was the case of the prosecution that in the beneficial scheme introduced for poor persons under residential scheme an amount of Rs.9800/- was sanctioned during the year 1991-92 to the complainant. It is the specific case of the complainant that though she was to be paid entire Rs.9800/-, but appellant misled her and procured her signature and made payment of only Rs.4000/- and he has utilised rest of the amount for himself for his personal benefit and gain. Merely because an offence is compoundable under Section 320 Cr.PC, still discretion can be exercised by the court having regard to nature of offence, as such it is rightly held in the impugned judgment that as the offence for which appellant was convicted and sentenced, it will have its own effect on the society at large. In view of the reasons recorded in the impugned order rejecting the application for compounding, it cannot be said that the High Court has committed any error in not accepting the application filed for compounding the offence."

7. In the above case, the accused committed offence under Section 420 I.P.C. In the beneficial scheme introduced for poor persons under residential scheme was sanctioned and the accused after procuring their signatures made payment only half of the amount from the sanctioned amount. The rest of the amount, the accused utilised for his personal benefits and gains. Therefore, it is construed as offence as against the society at large. As such, their petitions for compounding is rejected.

8. In the case on hand, the allegations as against the petitioners are that the first accused approached the second accused and stated that one Mrs.D.Sundarambal was lawful owner of the 20 acres and offered to sell the same at the rate of 31.5 lakhs per acre. On the said submission the defacto complainant paid a sum of Rs.5,09,00,000/- in favour of the said D.Sundarambal. The same kind of transaction was done by the first and second accused with several other vendors and various sale transactions were effected to the company, namely IVRCL Company through the second respondent. Thereafter the said D.Sundarambal executed power of attorney in favour of one, Shanmugam who is the Deputy General Manager of the Company to register his land measuring to an extent of 5.09 acres. Subsequently, the second respondent found that the said D.Sundarambal has no right to sell the land except 5.09 acres out of 20 acres thereby the first and second accused cheated the second respondent through forged and fabricated relevant documents and misappropriated to the tune of Rs.2.59 crores.

9. It is also seen that the petitioners executed power of attorney with the fabricated documents and subsequently all the documents were cancelled and the amount received by them also returned to the defacto complainant. Some of the property classified as 'poramboke' were in the possession and enjoyment of the petitioners and as such in respect of those properties also executed power of attorney. Now the entire documents were cancelled and the amounts received were also settled by the petitioners to the respective parties.

10. It is relevant to cite the judgment reported in (2014) 9 SCC 653 in the case of Yogendra Yadav and others Vs. State of Jharkhand and another, which reads as follows:-

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab[1]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that

quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In Gian Singh this Court has observed that where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. Needless to say that the above observations are applicable to this Court also.

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant-Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. Learned counsel for the parties have confirmed that the disputes between

the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings."

11. It is also relevant to cite the judgment reported in (2014) 6 SCC 466 in the case of Narinder Singh Vs. State of Punjab, which reads as follows :-

"16.3.....

29.....

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases. 29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

12. The Hon'ble Supreme Court of India has held in Crl.Apl.No.349 of 2019 dated 05.03.2019 in the case of the State of Madhya Pradesh Vs. Laxmi Narayan and others, with regard to quashing the proceedings for the offence punishable under Section 307 of IPC on compromise, after discussing the judgments reported in

- (i) (2012) 10 SCC 303 - Gian Singh Vs. State of Punjab
 - (ii) (2011) 10 SCC 705 - Shiji @ Pappu & others Vs. Radhika and another
 - (iii) (2014) 15 SCC 29 - State of Maharashtra Vs. Vikram Anantraï Doshi
 - (iv) (2014) 6 SCC 466 - Narinder Singh Vs. State of Punjab
- as follows :-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to herein above, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under

Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein above;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

13. The Hon'ble Supreme Court of India held in the above

cases that the power conferred under Section 482 Cr.P.C. to quash the criminal proceedings for the non compoundable offences under Section 320 I.P.C. can be exercised having overwhelming and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves. Such a power is not to be exercised those prosecutions those involved heinous and serious offence of mental depravity or offences like murder, rape, dacoity etc. Such offences are not private in nature and have a serious impact on society. Further held that such a power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

14. In the case on hand, the petitioners have committed offence as against private individuals. Though they fabricated documents of Government poramboke lands and executed power of attorney they cancelled all the documents executed by them and also settled the amount to the defacto complainant. The lands which were in their possession, they executed power of attorney. Therefore, these offences are not as against the society and it cannot be viewed as serious or heinous offence. Further now the entire issue has been settled between the parties and there is no chance for conviction. The pending of the proceedings would not serve any purpose.

15. Further the parties in these Criminal Original Petitions have filed joint memo in each O.P.'s., and the same reads as follows:

Joint memo in CrI.O.P.Nos.16055 & 16349 of 2017

" The parties to the above Original Criminal Petition have arrived at a mutual compromise settling the issues / disputes, which are the subject matter of the present Criminal original proceedings and otherwise. The issues / disputes have been settled out of the court and the 2nd Respondent also had mentioned that they will withdraw the proceedings initiated through Criminal complaint preferred against the Petition which in turn was registered as Crime No.184 of 2014 on the file of Team 4, EDF Wing II, CCB, Vepery, Chennai for the offences U/s.406, 420 r/w 34 of the IPC and the same is pending on the file of Chief Metropolitan Magistrate Court, Egmore.

Hence it is humbly prayed that this Hon'ble Court may be pleased to pass record the above mentioned submission and pass such other or other orders as this Hon'ble court may deem fit and proper in the

circumstances of the case and thus render justice.”
Joint memo in CrI.O.P.No.21025 of 2018

” The parties to the above Original Criminal Petition have arrived at a mutual compromise settling the issues / disputes, which are the subject matter of the present Criminal original proceedings and otherwise. The issues / disputes have been settled out of the court and the 2nd Respondent also had mentioned that they will withdraw the proceedings initiated through Criminal complaint preferred against the Petition which in turn was registered as Crime No.4 of 2014 on the file of Crime Branch, CID Counterfeit currency wing and the same is pending on the file of XI Metropolitan Magistrate Court, Saidapet.

Hence it is humbly prayed that this Hon'ble Court may be pleased to pass record the above mentioned submission and pass such other or other orders as this Hon'ble court may deem fit and proper in the circumstances of the case and thus render justice.”

16. Therefore, to secure ends of justice and to prevent the abuse of process of court, this Court is inclined to allow these criminal original petitions as such the proceedings in CC.No.6084 of 2016 on the file of the XI Metropolitan Magistrate, Saidapet and FIR in Crime No.184 of 2014 on the file of the City Crime Branch, Team IV, EDF Wing II, Vepery, Chennai is quashed insofar as the petitioners herein and the terms of Joint Memo of Compromise shall form part and parcel of this Order.

17. Each of the petitioners shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as costs, to the orphanage viz., CHILD situated at No.647, Kadappa Road, Madhanakuppam, Thiruvallur, Tamil Nadu (Ph.No.9841656103), within a period of one week from the date of receipt of a copy of this order and file a photocopy of the receipt along with a memo reporting compliance in the Registry.

18. With the above observations, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

*Enclosed Xerox Copy of the Joint Memo of Compromise.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Superintendent of Police,
Counterfeit Currency Wing,
Crime Branch CID, Chennai 600 008

2. The Sub Inspector of Police,
City Crime Branch,
Team IV, EDF Wing II,
Vepary, Chennai - 600 007

3. The XI Metropolitan Magistrate,
Saidapet

4. The City Crime Branch,
Team IV, EDF Wing II,
Vepary, Chennai.

5. The Public Prosecutor,
High Court of Madras

Copy to:

6.The orphanage viz., Child
No.647, Kadappa Road,
Madhanakuppam, Thiruvallur.

7. The Section Officer,
V.R Section,
High Court, Madras

+3cc to M/s.Nathans & Associates, Advocate sr.37553 to 37555

CrI.O.P.Nos.16055 and 16349 of 2017 & 21025 of 2018
and CrI.M.P.Nos.11413 and 11414 of 2018

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