



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P. (MD) .No.6475 of 2019

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Jahir Hussain ... Petitioner
- Vs. -

1.The Inspector of Police,
Vilakuthoon Police Station,
Madurai District
Crime No.1527 of 2016

2.Mohamed Ali Jinnah ... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the charge sheet in S.C.No.682 of 2019 is pending on the file of the Principal District and Sessions Judge, Madurai and quash the same.

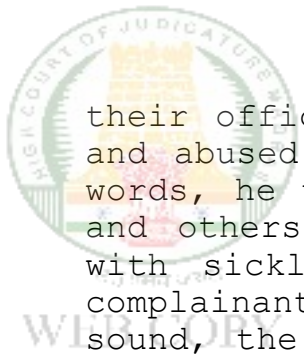
For Petitioners : Mr.P.Senguttarasan

For R-1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition has been filed to quash the charge sheet in S.C.No.682 of 2019 is pending on the file of the Principal District and Sessions Judge, Madurai as against the petitioner herein.

2.The learned counsel appearing for the petitioner submitted that the complaint has been lodged alleging that Al Lajana Thul Deeniya belongs to wakf trust and the trust office is functioning in the said building and the defacto complainant, Abdul Malik and Mohamed Siddqueraja maintained the office and on 25.11.2016 when the defacto complainant and others were in that office, the petitioner/accused, who has been involved in various cases in murder, Ganja and forgery, came to their office and told that he leased the godown to one Nadar and hence, he threatened them to vacate the premises and run away from the office and threatened the defacto complainant and others and demanded Rs.50,000/- for bribe per month, failing which they would face the consequences and since the petitioner was were accused in various cases, they kept quiet on that day and on 27.11.2016, they went to the respondent police and lodged a complaint as against the accused and on 28.11.2016, at about 4.00 p.m., when the defacto complainant and others were in



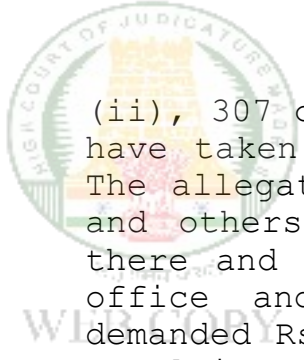
their office, the accused trespassed into their office with sickle and abused them with filthy language and if they did not heed his words, he will kill all of them and hence, the defacto complainant and others run to Vehkalakadai road and the accused stopped them with sickle and tried to attack his head, however, the defacto complainant escaped from the attack and since the public raised a sound, the petitioner ran away from the occurrence place by saying another day, he would kill all of them and entered into their office and looted the table, chair and damaged some documents worth about Rs.10,000/- and hence, the defacto complainant lodge a complainant before the respondent and on receipt of the same, the respondent police registered the case in Crime No.1527 of 2016 and charge sheet also filed for the offence under Sections 294(b), 341, 448, 506(ii), 307 of I.P.C. read with 3(1) of TNPPDL Act. The learned Principal District and Sessions Judge, Madurai has taken cognizance for the said offences in S.C.No.682 of 2018 and it is pending for trial.

3.The learned counsel appearing for the petitioners further submitted that the petitioners and the defacto complainant amicably settled their issues and decided to put an end to the criminal case. They also entered into joint compromise memo on 23.04.2019. Therefore, he prayed for quashment of the proceedings.

4.Per contra, the learned Additional Public Prosecutor submitted that the petitioner is arraigned as accused in S.C.No.682 of 2018 and he is charged for the offences under Sections 294(b), 341, 448, 506(ii), 307 of I.P.C. read with 3(1) of TNPPDL Act. The petitioner has 12 previous cases. The charges as against the accused person is that he threatened the second respondent with dire consequences to his life and trespassed into the property belonging to the second respondent and committed very serious offence.. Though compromise entered into between the petitioner and the second respondent/defacto complainant, the entire proceedings cannot be quashed, since the offence involved in moral turpitude, grave and serious offence and it cannot be quashed, since it is harmful effect on society and it is not restricted to two individuals or groups. He relied upon the judgement passed by the Hon'ble Supreme Court in **Crl.A.No.336 of 2019** in the case of **the State of Madhya Pradesh Vs. Dhruv Gurjar and another**. By citing this judgment he further submitted that while quashing the complaint or charge sheet on compromise memo, it has to be seen the previous antecedents of the accused persons and it is essential factors while exercising inherent powers under Section 482 of Cr.P.C. Therefore, he prayed for dismissal of this quash petition.

5.Heard both sides and perused the materials available on records,

6.The petitioner is the sole accused. The charges as against the petitioner are punishable under Sections 294(b), 341, 448, 506



(ii), 307 of I.P.C. read with 3(1) of TNPPDL Act and the trial Court have taken cognizance for the said offences in S.C.No.682 of 2018. The allegations are that on 25.11.2016 when the defacto complainant and others were in the trust office, the petitioner/accused came there and asked them to vacate the premises and run away from the office and threatened the defacto complainant and others and demanded Rs.50,000/- for bribe per month and threatened the defacto complainant and others with dire consequences and on 28.11.2016, at about 4.00 p.m., when the defacto complainant and others were in their office, the accused trespassed into their office with sickle and abused them with filthy language and entered into their office and looted the table, chair and damaged some documents worth about Rs.10,000/-. Hence the second respondent lodged the complaint.

7. Thereafter, in view of the subsequent development between the second respondent and the petitioner/accused they have settled the issues amicably to give quietus to this criminal case. Pursuant to the same, the petitioners and the second respondent/defacto complainant have entered into joint compromise memo dated 23.04.2019. The said Joint Memo of Compromise has been filed before this Court, signed by the petitioners and the second respondent and also attested by their respective counsel. All the parties are present and identified by their respective counsel and the first respondent. In order to identify the respective parties, they have also produced the copies of the Aadhaar Card are made part of the record. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves.

8. Now, the point for consideration is that whether the offence punishable under Section 307 of IPC can be quashed on compromise?

9. The learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court of India held that the High Court can exercise its power depend on facts of each cases. The offences which involve moral turpitude, grave offence like rape, murder cannot be effaced by quashing the proceedings because they have harmful effect on society. Such offence cannot be said to be restricted to two individuals or two groups. Further, when the High Court convinced that the offences are entirely personal in nature, did not affect public peace or tranquility and whether it feels that quashing of the said proceedings on account of compromise would bring about the peace and would secure ends of justice, it should not hesitate to quash the same. He further submitted that the Hon'ble Supreme Court of India in full bench headed by the present Chief Justice of India held that criminal case having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing, particularly the offence arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry or the family disputes, where the wrong is basically private or personal in nature and the parties have resolved their entire dispute.



10. However, in this regard, the learned Government Advocate (criminal side) relied upon the judgment of the Hon'ble Supreme Court of India in **Crl.A.No.336 of 2019** in the case of **"The State of Madhya Pradesh Vs. Dhruv Gurjar and another"** which reads as follows :-

"16.4. In the case of Parbatbhai Aahir (supra), again this Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Considering a catena of decisions of this Court on the point, this Court summarised the following propositions: "(1) Section 482 CrPC 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. (2) 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 CrPC. The power to quash under Section 482 is attracted even if the offence is noncompoundable. (3) 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. (4) 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. (5) 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. (6) 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.(7)As distinguished from serious offences, there maybe criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.(8)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.(9) 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(10)There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic wellbeing 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."16.5In the case of Manish (supra), this Court has specifically observed and held that, when it comes to the question of compounding an offence under Sections 307, 294 and 34 IPC(as in the appeal @ SLP(Crl.) No. 9859/2013) along with Sections 25 and 27 of the Arms Act (as in the appeal @ SLP(Crl.) No.9860/2013), by no stretch of imagination, can it be held to be an offence as between the private parties simpliciter. It is observed that such offences will have a serious impact on the society at large. It is further observed that where the accused are facing trial under Sections 307, 294 read with Section 34 IPC as well as Sections 25 and 27 of the Arms Act, as the offences are definitely against the society, accused



will have to necessarily face trial and come out unscathed by demonstrating their innocence.16.6In the case of Deepak (supra), this Court has specifically observed that as offence under Section 307 IPC is noncompoundable and as the offence under Section 307 is not a private dispute between the parties inter se, but is a crime against the society, quashing of the proceedings on the basis of a compromise is not permissible. Similar is the view taken by this Court in a recent decision of this Court in the case of Kalyan Singh (supra).17.Now so far as the decisions of this Court upon which the learned counsel appearing on behalf of the accused has placed reliance, referred to herein above, are concerned, none of the decisions shall be of any assistance to the accused in the present case. In all the aforesaid cases, the dispute was a matrimonial dispute, and/or the dispute predominantly of a civil dispute, and/or of the dispute where the wrong is basically private or personal.18.Now so far as the reliance placed upon the decision of this Court in the case of Shiji (supra), while quashing the respective FIRs by observing that as the complainant has compromised with the accused, there is no possibility of recording a conviction, and/or the further trial would be an exercise in futility is concerned, we are of the opinion that the High Court has clearly erred in quashing the FIRs on the afore said ground. It appears that the High Court has misread or misapplied the said decision to the facts of the cases on hand. The High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction. Such observations are presumptive and many a time too early to opine. In a given case, it may happen that the prosecution still can prove the guilt by leading cogent evidence and examining the other witnesses and the relevant evidence/material, more particularly when the dispute is not a commercial transaction and/or of a civil nature and/or is not a private wrong. In the case of Shiji (supra), this Court found that the case had its origin in the civil dispute between the parties, which dispute was resolved by them and therefore this Court observed that, 'that being so, continuance of the prosecution where the complainant is not ready to support the allegations...will be a futile exercise that will



serve no purpose'. In the aforesaid case, it was also further observed 'that even the alleged two eyewitnesses, however, closely related to the complainant, were not supporting the prosecution version', and to that this Court observed and held 'that the continuance of the proceedings is nothing but an empty formality and Section 482 Cr.P.C. can, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below. Even in the said decision, in paragraph 18, it is observed as under:"18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."

18.1. Therefore, the said decision may be applicable in a case which has its origin in the civil dispute between the parties; the parties have resolved the dispute; that the offence is not against the society at large and/or the same may not have social impact; the dispute is a family/matrimonial dispute etc. The aforesaid decision may not be applicable in a case where the offences alleged are very serious and grave offences, having a social impact like offences under Section 307 IPC and 25/27 of the Arms Act etc. Therefore, without proper application of

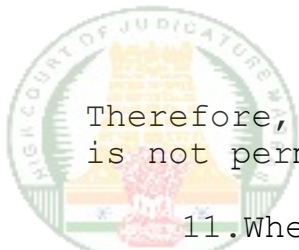


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mind to the relevant facts and circumstances, in our view, the High Court has materially erred in mechanically quashing the respective FIRs, by observing that in view of the compromise, there are no chances of recording conviction and/or the further trial would be an exercise in futility. The High Court has mechanically considered the aforesaid decision of this Court in the case of Shiji (supra), without considering the relevant facts and circumstances of the case. 18.2 Even otherwise, in the facts and circumstances of the case of the appeal arising from SLP(Crl.) No. 9860/2013, the High Court has erred in quashing the FIR. It is required to be noted that the FIR was lodged on 21.12.2012 for the offence alleged to happen on 21.12.2012. All the accused were absconding. After a period of approximately three months, they approached the High Court by way of filing a petition under Section 482 of the Cr.P.C., i.e., on 12.03.2013. The learned Chief Judicial Magistrate issued a proclamation under Section 82 of the Cr.P.C. against the accused persons on 14.03.2013. In the meantime, the accused managed to get the affidavits of the complainant and the two witnesses dated 09.02.2013, and the High Court quashed the FIR on 15.03.2013, i.e., within a period of three days from the date of filing the petition. The High Court has also not considered the antecedents of the accused. It has come on record that the accused persons were facing number of trials for the serious offences. The aforesaid would be relevant factors, while exercising the inherent powers under Section 482 Cr.P.C. and while considering the application for quashing the FIR/complaint/criminal proceedings. In fact, in such a situation, the High Court ought to have been more vigilant and ought to have considered relevant facts and circumstances under which the accused got the settlement entered into. The High Court has not at all considered the aforesaid relevant circumstances, while exercising the power under Section 482 Cr.P.C."

He pointed out that though the parties entered into compromise, the offence punishable under Section 307 of IPC cannot be quashed, since the offence under Section 307 of IPC is not a private dispute between the parties, but it is a crime against the society.

<https://hcservices.ecourts.gov.in/hcservices/>



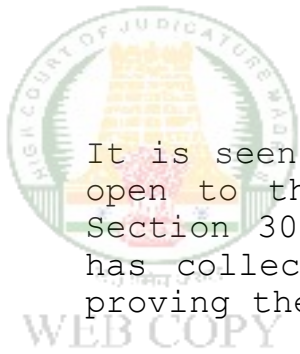
Therefore, quashing the entire proceedings based on the compromise is not permissible.

11. Whereas in the same judgment, the Hon'ble Supreme Court of India relied upon 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.



It is seen from the above the Hon'ble Supreme Court held that it is open to the High Court to examine as to whether incorporation of Section 307 of 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 of IPC.

12.It is further represented that the Hon'ble Supreme Court clarified the said issue 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 Anantrai Doshi

(iv) (2014) 6 SCC 466 - Narinder Singh Vs. State of Punjab

where, the Hon'ble Supreme Court has held 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;i



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ii) 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 impart 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 reiterated and clarified in the **Narinder Singh** case that 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; 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 impart 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.

14.In the case on hand, the investigation completed and charge sheet filed for the offences under Sections Sections 294(b), 341, 448, 506(ii), 307 of I.P.C. read with 3(1) of TNPPDL Act. and had taken cognizance in S.C.No.682 of 2018. Further, according to the case of the prosecution, the petitioner has 12 previous cases and since the accused/petitioner threatened the defacto complainant with dire consequences by showing sickle, the offence has been registered as against the petitioner.

15.That apart the entire allegations are that the petitioner threatened the defacto complainant to vacate the premises and run away from the place. Since the the offences are heinous and the



same has serious impact on society, this Court is not incline to exercise its power under Section 482 of Cr.P.C.

16. In view of the above, the Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

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Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

Arul

To

1.The Inspector of Police,
Vilakuthoon Police Station,
Madurai District.

2.The Principal District and Sessions Judge, Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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