



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Crl.O.P.(MD) No.10213 of 2019

1.Petchimuthu
2.Chinnakaruppasamy
3.Kaliammal
4.Kaliappan : Petitioners/Accused Nos.1 to 4

Versus

1.State represented by,
Inspector of Police,
Sankarankovil All Women P.S.,
Cr.No.12/2015,
Tirunelveli District. : 1st Respondent/Complainant

2.Kalishwari : 2nd Respondent/Defacto Complainant

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to admit this quash petition on file, to call for the records in S.C.No.411 of 2018 on the file of the Mahila Court, Tirunelveli, Tirunelveli District and to quash the same.

For Petitioners : Mr.J.Senthil Kumar

For Respondent No.1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

For Respondent No.2 : Mr.M.Suresh

O R D E R

This petition has been filed to quash the criminal proceedings in S.C.No.411 of 2018 on the file of the Mahila Court, Tirunelveli, Tirunelveli District.

2. The petitioners are arrayed as accused Nos.1 to 4 in S.C.No.411 of 2018 and charged with for the offences punishable under Sections 417, 376, 450, 294(b), 506(i) of the Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The above crime has been registered based on the complaint given by the second respondent. Now, to quash the said proceedings, the present petition has been filed.



3. The case of the prosecution is that the second respondent/*defacto* complainant, by name Kalishwari belongs to Chennikulam Village. In the month of December, 2014, the first accused, with a promise to marry the *defacto* complainant, had sexual intercourse with her, he continued the same for several times and the *defacto* complainant has also become pregnant. Thereafter, the first accused refused to marry her. In the above circumstances, the complaint has been filed. After investigation, final report has been filed and it was also taken cognizance by the Mahila Court, Tirunelveli, Tirunelveli District and pending in S.C.No.411 of 2018.

4. The learned counsel appearing for the petitioners as well as the learned counsel appearing for the second respondent submitted that pending the complaint, the first accused came forward to marry the second respondent/*defacto* complainant and on 29.11.2015, marriage was solemnized between them and now, both of them are living together happily and they also got two children out of their wedlock. In the above circumstances, the second respondent/*defacto* complainant is not willing to proceed further with the criminal case.

5. Today, when the matter was taken up for hearing, the petitioners and the second respondent/*defacto* complainant are present in Court and they are identified by their respective counsel. On enquiry, the second respondent/*defacto* complainant has stated that the first accused and herself were in love and the first accused also assured that he will marry her and on believing his words, she has agreed for sexual intercourse and both of them were living together for several days, thereafter, the first accused refused to marry her, as promised. In the above circumstances, she has given a complaint before the first respondent police. Later, the first accused himself has come forward to marry her and the marriage also took place between them on 29.11.2015. Now, both of them are living together peacefully, they have also got two children out of wedlock. Hence, she is not willing to proceed with the complaint and both parties have also filed a joint compromise memo before this Court.

6. It is settled law that the High Court has inherent power under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings even for the offences which are not compoundable under Section 320 of the Code of Criminal Procedure, where the parties have settled their dispute between themselves. However, while quashing the criminal proceedings, based on the settlement arrived at between the parties, the High Court should act with caution and the power should be exercised sparingly only in order to secure the ends of justice and also to prevent abuse of process of any Court.



7. In *Gian Singh vs. State of Punjab* [2012 (10) SCC 303], the Supreme Court has held as follows:

"61. The position that emerges from the above discussion can be summarised 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 FIR may be exercised where the offender and the 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 a serious impact on society."

8. In *Narinder Singh v. State of Punjab* [2014(6) SCC 466], after considering the *Gian Singh*'s case referred to above, the Hon'ble Supreme Court has held as follows:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.



29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

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."

9. In *Parbatbhai Aahir v. State of Gujarat* [AIR 2017 SC 4843], the Supreme Court held thus"

"(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 inherent 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 non-compoundable.

(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 formulate.

(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 may be 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 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. Recently, in *State of Madhya Pradesh v. Laxmi Narayan* [AIR 2019 SC 1296], the Hon'ble Supreme Court, considering all the above judgments, has held as follows:

"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

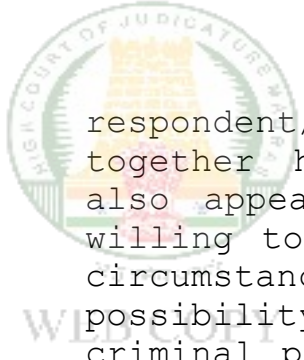


the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

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."

11. Keeping the above principles in mind, let us now consider the instant case as to whether it is a fit case to quash the criminal proceedings based on the settlement arrived at between the parties.

12. In the case at hand, the petitioners are charged with for the offences punishable under Sections 417, 376, 450, 294(b), 506(i) of the Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. No doubt, it is a heinous and serious offence, and also a crime against Society. But, on a careful perusal of the entire materials collected during the investigation, it is seen that the second respondent/defacto complainant had an inclination towards the first accused, and the first accused has also assured that he will marry her. On believing his words, she has agreed for sexual intercourse and both of them were living together for several days. Thereafter, even though the first accused wanted to marry the second respondent/defacto complainant, due to various circumstances, he was not able to keep his promise. In such circumstances, the instant complaint has been filed. However, now, the first accused married the second respondent/defacto complainant and they are living together happily and got two children out of their wedlock. In the above circumstances, it could be seen that the first accused did not have any *mala fide* motive and make any false promise. In the above circumstances, the assurance made by the first accused would not fall within the ambit of cheating or deception, and consequently, the offence under Section 376 of the Indian Penal Code also is not made out. Insofar as the other accused are concerned, they are the in-laws of the second respondent/defacto complainant and absolutely, there is no allegation against them. Now the first accused married the second



respondent/*defacto* complainant and both of them are living together happily and the second respondent/*defacto* complainant also appeared before this Court and submitted that she is not willing to prosecute the criminal case any further. In the above circumstances, even if the trial is permitted to proceed, the possibility of conviction is remote and bleak and, continuing the criminal proceedings would only cause oppression and prejudice to the parties and it only amounts to abuse of process, hence, in order to secure the ends of justice, in an exceptional circumstance, this Court is inclined to quash the criminal proceedings.

13. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioners in S.C.No.411 of 2018 on the file of the Mahila Court, Tirunelveli, Tirunelveli District, is quashed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

Enclosed joint compromise memo

To

1.The Mahila Court, Tirunelveli, Tirunelveli District.

2.The Inspector of Police,
Sankarankovil All Women P.S.,
Tirunelveli District.

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

+1cc to Mr.J.SENTHIL KUMAR, Advocate, SR.No.77165

Order made in
Cr1.O.P. (MD) No.10213 of 2019

NA (01.08.2019) 8P : 5C