



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.04.2019

Delivered on : 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.21418 of 2016

and

Crl.M.P. (MD)No.10980 of 2016

1.B.Dinesh

2.P.Kathiresan

3.R.Gandhidhasan

4.R.Kannadhasan

... Petitioners 1 to 4/Accused 1 to 4

Vs.

1.The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
Crime No.23 of 2016

2.Priyadharshini

... Respondents

[Crime No.23 of 2016 - amended as per order dated 22.11.2016 and made in Crl.OP(MD)No.21418/2016]

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Crime No.23 of 2016 on the file of the first respondent police and quash the same.

For Petitioners : M/s.Viji

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor for R.1

Mr.B.Anandan for R.2

ORDER

This Criminal Original Petition has been filed by the petitioners / accused to quash the First Information Report in Crime No.23 of 2016 on the file of the first respondent Police.

2. The case in Crime No.23 of 2016 came to be registered at the instance of the second respondent / complainant on 13.09.2016.

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



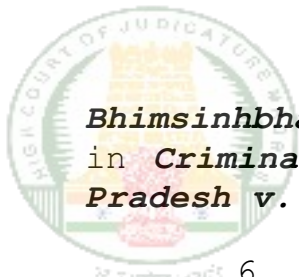
According to the complainant, namely, Priyadharshini, she was studying B.Sc. First year in Madura College and she was in love with the first petitioner / Dinesh and the petitioners 2 to 4 are his friends. On the date of occurrence, the petitioners 2 to 4 saw the complainant along with the first petitioner in M.G.R. Central Bus Stand (previously Matuthavani Central Bus Stand), Madurai and by convincing her that they would arrange marriage between the first petitioner and the complainant, took the complainant to her house and while dropping her, told her to marry some other person. The complainant intimidated them that if she is not able to marry the first petitioner, then she would commit suicide, for which, the second petitioner stated that even if she do so, she may not get the first petitioner. Triggered, the complainant went upstairs and jumped from the top. Based on her report, the first respondent / Inspector of Police, All Women Police Station, Manamadurai has registered the present case as against the petitioners for the offence punishable under Sections 9(j)(1) & 10 of Protection of Child from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

3. This Court, by order dated 10.11.2016, admitted this criminal original petition and has also granted an order of interim stay.

4. When the matter is taken up for final hearing, the learned Counsel for the petitioners as well as the second respondent / complainant, in unison, submitted that compromise has been reached among the parties. They have also filed a joint compromise memo dated 25.04.2019, signed by the respective parties as well as their Counsel, wherein, among other things, it has been stated as follows:

"2.The petitioners submit that the petitioners and the defacto complainant are close relatives. Moreover, due to intervention of family members and other villagers, the petitioners and the defacto complainant had amicably resolved their dispute. Further, for the purpose of maintaining cordial relationship and to avoid further problems among the relatives, said compromise has been amicably arrived. Moreover, no undue influence has been made in arriving the compromise. Further, both the parties are willingly signed the joint compromise in the presence of Panchayathars and willingly signed this joint compromise memo also."

5. The learned Additional Public Prosecutor appearing for the first respondent Police opposed for quashing the case as it is registered under the POCSO Act. He would further submit that it is not only an offence against the complainant, but also an offence against the Society in large and therefore, it cannot be quashed, in view of the decisions rendered by the Hon'ble Supreme Court reported in **(2017) 9 SCC 641**, in the case of **Parbatbhai Aahir @ Parbatbhai**



Bhimsinhbhai Karmur and others v. State of Gujarat and another and in **Criminal Appeal No.349 of 2019**, in the case of **State of Madhya Pradesh v. Laxmi Narayan and others (decided on 05.03.2019)**.

6. This Court has paid it's best attention to the rival submissions made by the learned Counsel on either side and also perused the documents placed on record.

7. In **Gian Singh v. State of Punjab**, reported in **(2012) 10 SCC 303**, a Full Bench of the Hon'ble Supreme Court has held as follows:

"61. ...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. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would



put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

8. In **State of Maharashtra v. Vikram Anantrai Doshi**, reported in **(2014) 15 SCC 29**, the Hon'ble Supreme Court has held that "...the Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement."

9. In **Narinder Singh v. State of Punjab**, reported in **(2014) 6 SCC 466**, the Hon'ble Supreme Court, after considering the decision in the case of Gian Singh (cited supra), has summed up as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.

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.



29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings / investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances / material mentioned above."

10. In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another**, reported in (2017) 9 SCC 641 (supra), a Full Bench of the Hon'ble Supreme Court has laid down the following propositions:

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

16.1. 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 recognise and preserves powers which inhere in the High Court.

16.2. 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 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. 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 inherent power.

16.4 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.

16.5. 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.

16.6. 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.

16.7. 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.

16.8. 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.

16.9. 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

16.10. There is yet an exception to the principle set out in propositions 16.8 & 16.9 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."

11. In **State of Madhya Pradesh v. Laxmi Narayan and others**, in **Criminal Appeal No.349 of 2019 (decided on 05.03.2019)** (supra), a Full Bench of the Hon'ble Supreme Court, after referring to a catena of decisions, has held as follows:

"13. (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."

14. Keeping in mind the broad principles, as discussed supra, this Court has carefully considered the present case on hand. The First Information Report in Crime No.23 of 2016 has been registered under Sections 9(j)(1) & 10 of the POCSO Act. But, a mere reading of the same does not disclose any sexual act as required under the Act. For better appreciation, Sections 9(j)(1) & 10 of the POCSO Act are extracted hereunder:

"9. Aggravated sexual assault -

... (j) whoever commits sexual assault on a child, which -

(1) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

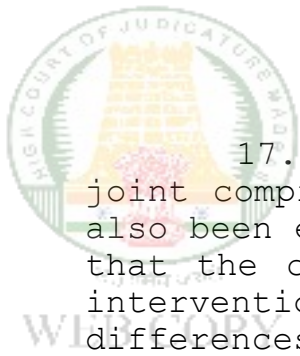
...

10. Punishment for aggravated sexual assault - Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."

15. Section 7 of the POCSO Act deals with sexual assault and for better understanding, the same is extracted as under:

"Sexual assault - Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

16. There is no allegation of touching any parts of the body of the complainant by the first petitioner with sexual intent, as defined under Section 7 of the POCSO Act. Insofar as the second petitioner is concerned, he is the friend of the first petitioner and on the date of occurrence, the second petitioner is said to have took the complainant to her house and while dropping her at her house, informed her that she cannot marry the first petitioner and got annoyed over the same, the complainant / second respondent went to the upstairs and jumped down. There is no whisper about the petitioners 3 & 4 in the complaint and the only point as regards them is that they accompanied the other petitioners. Therefore, this Court is of the view that the complaint does not make out a case for the offence punishable under the provisions of POCSO Act and the ingredients for the offence under Sections 9(j)(1) & 10 of POCSO Act is not made out in this case.



17. Be that as it may, the parties have now entered into a joint compromise and the contents of the joint compromise memo have also been extracted supra. It appears from the joint compromise memo that the complainant and the petitioners are relatives and on the intervention of family elders, they have sorted out their differences for the purpose of maintaining cordial relationship.

18. The parties along with the respective Counsel are present before this Court and their identification has been verified by the learned Additional Public Prosecutor through the first respondent Police. In view of the settlement arrived at between the parties and since this settlement is sufficient to quash the First Information Report, as per the guidelines of the Hon'ble Supreme Court, discussed supra, this Court feels that allowing the complaint to proceed further would be a futile exercise.

19. In such view of the matter, this Criminal Original Petition is allowed and the case in Crime No.23 of 2016 on the file of the first respondent Police stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Inspector of Police,
All Women Police Station,
Manamadurai, Sivagangai District.

Order made in
CrI.O.P. (MD)No.21418 of 2016
and
CrI.M.P. (MD)No.10980 of 2016
29.07.2019

CS(01.10.2019) 10P 2C