



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.(MD)No.18064 of 2019

XXXXXXXX

... Petitioner/ Sole Accused

Vs.

1.The State

Rep. By the Inspector of Police,
Thideer Nagar Police Station,
Madurai City, Madurai.
(Crime No.158 of 2019)

... 1st Respondent/ Complainant

2.Nasar Mydeen

... 2nd Respondent/ Defacto Complainant

3.XXXXXX

... 3rd Respondent/ Victim

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in Spl.S.C.No.84 of 2019, pending on the file of the Sessions Judge, Mahila Court, Madurai and quash the same.

For Petitioner : Mr.A.Sivasubramanian

For R1 : Mr.S.Chandrasekar

Additional Public Prosecutor

For R2 & R3 : Mr.A.Jegatha

ORDER

The Criminal Original Petition has been filed to quash the proceedings in Spl.S.C.No.84 of 2019, on the file of the learned Sessions Judge, Mahila Court, Madurai, for the offences punishable under Sections 5(1) and 6 of the Protection of Child from Sexual Offences Act, 2012, in Crime No.158 of 2019.

2. A joint compromise has been filed by the petitioner and the second and third respondent which has been signed by the petitioner and the second and third respondent and also by their respective counsel. The petitioner and the second and third respondent are also present in person before this Court and they were also identified by the respondent police.



3. The learned counsel for the petitioner would submit that originally the second respondent/defacto complainant had given a complaint stating that his son was found missing based on which a case in Crime No.158 of 2019 was registered under the caption 'Boy Missing' on 21.03.2019. In the complaint the second respondent had stated that the third respondent his son who was aged about 17 years was studying in (XXXXXX) Engineering College in Civil Engineering group and his activities were found to be suspicious and later it was found that he was in love with the girl. The second respondent and his wife had reprimanded his son and that on 18.03.2019 they had found that their son was missing and unable to find him had requested the respondent police to find out his son.

4. During the course of investigation it came to light that there was a love affair between the third respondent and the petitioner who were classmates doing Engineering course. The parents of the petitioner having found that their daughter was in love affair with the victim/third respondent had left her in their relative's house in Chennai. Later it transpired that the victim/third respondent had travelled all the way to Chennai to visit the petitioner and thereafter both of them eloped from the petitioner's relative house and they roamed around Chennai. Thereafter the third respondent had called his parents and told them that they were in Chennai. The mother of the victim had asked them to come back to Madurai and the petitioner and the third respondent had come back to Madurai and while they were travelling back in a sleeper bus they had consensual sexual relationship.

5. The learned counsel for the petitioner would further submit that it is an unfortunate case were two youngsters who are classmates studying Engineering course without understanding rigors of the provisions of the POCSO Act and without understanding the consequences have got themselves entangled into legal system. Though it is a consensual affair, unfortunately since the petitioner is few months elder to the victim she had been tranposed as an accused in this case. The respondent police also without approaching the case with sensitiveness have later altered the case for the provisions of the POCSO Act and remanded the petitioner to judicial custody and after completion of investigation have filed final report. He would submit that the parents of the petitioner after the arrest of petitioner have abandoned her and fortunately the second respondent and his wife who are the parents of the third respondent/victim finding that their son is also responsible for the fate of the petitioner had brought her within their fold and that they are taking care of the petitioner as their own daughter. Further, the second respondent and his family members have also decided to got the petitioner married to their son/ the victim after they had completed their studies and attain marriageable age. He would submit that though the offence alleged against the petitioner are serious in nature taking into consideration the



Court may invoke the inherent power Under Section 482 of Cr.P.C to quash the proceedings to secure the ends of justice.

6. The petitioner, the second respondent, his wife and his son/the victim are also present before this Court. When this Court enquired the petitioner the petitioner informed that she was aged about 18 years and 2 months at the time of occurrence the victim was aged about 17 years and 10 months and that they were classmates and friends. Coming to know love affair the parents of the petitioner had put her in their relatives house at Chennai. The victim had come to Chennai and they have eloped from the house of the relatives and when they had come back to Madurai in a sleeper coach bus there was a consensual affair. She submitted that after reaching Madurai they surrendered before the respondent police and the police after recording the statement from the victim had remanded her to judicial custody. After her arrest and remand to judicial custody her parents have abandoned her and second respondent family had helped her to come out on bail and that they have also shown pity on her and the second respondent and her family members are taking care of her as their daughter and that she is also continuing with her studies.

7. This Court also enquired the second respondent and his wife. The second respondent also stated that their son/victim is also responsible for the present fate of the petitioner. Since now the petitioner was abandoned by her parents they have brought the petitioner to their house and they are taking care of her and helping to continue her studies. The mother of the victim has also stated that she does not have daughter and that she is taking good care of the petitioner. This Court also enquired the respondent police and it was informed that the petitioner is now under the custody of the second respondent family.

8. 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.

9. 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."

10. 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."

11. 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."

12. 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."

13. Now taking into consideration the facts of the case it is seen that it is a unfortunate case where two classmates, a girl and boy without understanding the rigors of the provisions of the POSCO Act and without understanding the consequences have caught up in a legal wrangle. The girl was few months above 18 years and the boy was few months below 18 years. If it had been otherwise the boy would have become an accused and the girl would have become victim. It is unfortunate case were based on few months difference in the age, the girl has been made as accused.

14. Taking into consideration the facts of the case it is the victim who has gone all the way to Chennai and brought her back to Madurai and while they were in sleeper bus they had consensual sex. As stated earlier the parents of the petitioner have abandoned her and now is being taken care by the parents of the victim.

15. This Court is also reminded of the suggestions made by this Court in the case of Sabari @ Sabarinathan @ Sabarivasan -vs- The Inspector of Police, Belukurichi Police Station, Namakkal District and other reported in (2019)3 MLJ(Crl).110, wherein recommendations are made in dealing cases of love affair between teenagers above 16 years.

16. Considering the facts and circumstances of the case, this Court is of the opinion that it is a fit case to quash the criminal proceedings based on the submission arrived at between the parties to secure the ends of justice. No useful purpose will be served by allowing the proceedings against the petitioner to continue even though the offences are non compoundable in nature. Allowing the proceedings to continue will cause frustration to a young girl who is facing criminal proceedings for no fault of her.

17. Accordingly, this Criminal Original Petition stands allowed and as a sequel, the proceedings in Spl.S.C.No.84 of 2019, on the file of the learned Sessions Judge, Mahila Court, Madurai, is quashed and the terms of joint compromise memo shall form part and parcel of this order.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar

Note: Names of the petitioner and third respondent and their college name are not shown in order to protect their identity



ENCL: xerox Copy of Compromise Memo

To

1.The Sessions Judge, Mahila Court, Madurai.

2.The Inspector of Police,
Thideer Nagar Police Station,
Madurai City, Madurai.

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

+1 CC to M/s.A.SIVASUBRAMANIAN, Advocate (SR-103750[F] dated
06/12/2019)

Crl.O.P. (MD) .No.18630 of 2019
05.12.2019

gns/ aav
MS/VR-PN/SAR-3/9P.5C