



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) .No.17303 of 2019

Kawaskar @ Pratap Singh Athisayaraj ... Petitioner

Vs.

1.The State rep. by
The Deputy Superintendent of Police
Sathankulam Sub Division
Tuticorin District

2.The Inspector of Police
All Women Police Station
Tiruchendur
Tuticorin District.
Crime No.8/2018

3.Brindha ... 3rd Respondent/Defacto
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in pursuant to the Charge Sheet in Spl.S.C.No.7 of 2019 on the file of the Mahila Court, Tirunelveli and quash the same as illegal.

For Petitioner : Mr.K.Prabhu

For R-1& 2 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

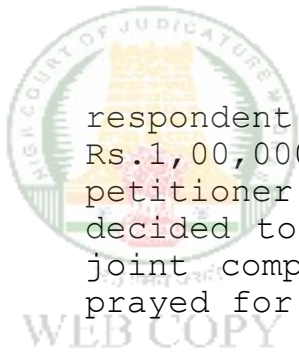
For R-3 : Mr.Senthil Kumar

ORDER

The Criminal Original Petition has been filed to quash the proceedings in Spl.S.C.No.7 of 2019 on the file of the Mahila Court, Tirunelveli for an alleged offences under Sections 5(1),5(j), (iii), 6 of POSCO Act and Section 3(1)(w)(i) of SC/ST(POA) Amended Act, 2015

2. The learned counsel for the petitioner submitted that the matter has been settled between the petitioner and the third

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respondent and the defacto complainant has agreed to receive Rs.1,00,000/- as full settlement. He further submitted that the petitioner and the third respondent amicably settled their issue and decided to put an end to the criminal case. They also entered into joint compromise and filed a memo to that effect. Therefore he prayed for quashment of the proceedings.

3.Per contra, the learned Government Advocate(Crl.Side) submitted that the petitioner is arraigned as accused in Spl.S.C.No.7 of 2019 and he is charged for the offences under Sections 5(1),5(j)(ii) 6 of the POSCO Act and Section 3(1)(w)(i) of SC/ST(POA)Amended Act,2015. The charges as against the accused person is that 10.10.2017 at about 03.00 p.m when the defacto complainant was in the agricultural field the accused without consent of the defacto complainant had sexual intercourse. Subsequently the accused had sexual intercourse with the defacto complainant frequently, out of which the defacto complainant become pregnant and gave birth to one male child 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.

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

5.The petitioner is the sole accused. The charges as against the petitioner are punishable under Sections 5(1),5(j)(ii) 6 of the POSCO Act and Section 3(1)(w)(i) of SC/ST(POA)Amended Act,2015 and the trial Court have taken cognizance for the said offences in Spl.S.C.No.7 of 2019. The allegation is that 10.10.2017 at about 03.00 p.m when the defacto complainant was in the agricultural field the accused without consent of the defacto complainant had sexual intercourse. Subsequently the accused had sexual intercourse with the defacto complainant frequently, out of which the defacto complainant become pregnant and gave birth to one male child. Hence the second respondent lodged the complaint.

6.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 . 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.

7.Now, the point for consideration is that whether the offence punishable under Sections 5(l),5(j),(iii), 6 of POSCO Act can be quashed on compromise?

8.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.

8. It is further represented by the learned Government Advocate (Crl.Side) that the Hon'ble Supreme Court clarified the said issue in ***Crl.Ap1.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

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

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code,on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High



Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein above;

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

9. In the case on hand, the investigation completed and charge sheet filed for the offences 5(1), 5(j), (iii), 6 of POSCO Act and Section 3(1)(w)(i) of SC/ST(POA) Amended Act, 2015 and had taken cognizance in Spl.S.C.No.7 of 2019. Since the offences are heinous and the same has serious impact on society, this Court is not inclined to exercise its power under Section 482 of Cr.P.C.

10. In view of the above, the Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar (CS)

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To

1.The Judge, Mahila Court, Tirunelveli

2.The Deputy Superintendent of Police
Sathankulam Sub Division
Tuticorin District

3.The Inspector of Police
All Women Police Station
Tiruchendur
Tuticorin District

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

+1 CC to M/s.K. PRABHU, Advocate (SR-101062[F] dated 25/11/2019)

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JMN(16.12.2019) 6P : 6C