

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 207 of 2019

ORDER:

The present Criminal Petition is filed by the petitioners/A1 and A9 to A15 under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against them in C.C.No.326 of 2017 on the file of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

The facts in issue are as under:

The 2nd respondent/complainant filed a private complaint against the petitioners/A1 and A9 to A15 and others before the XII Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad, for deceiving and cheating the 2nd respondent/complainant by criminal breach of trust. The allegations against the accused are with regard to siphoning off funds from the accused bank accounts by circumventing the restraint orders of the Hon'ble High Court and also the XI Additional Chief Judge, CCS, Hyderabad, to deceive the 2nd respondent/complainant without paying the loan amount availed by the accused company. The said private complaint was taken cognizance for the offences punishable under Sections 166, 166A, 206, 409, 420, 421, 422 and 424, 120-B read with Section 34 of the I.P.C., and the same was numbered as C.C.No.326 of 2017.

During pendency of the proceedings, the petitioners/A1 and A9 to A15 have admitted their liability and accepted to repay the loan

amount in accordance with the settlement agreement, dated 27.08.2018. Therefore, the 2nd respondent/complainant filed a petition under Section 257 of Cr.P.C., to withdraw the complaint by mentioning the facts for such withdrawal along with the settlement agreement executed between the accused and the 2nd respondent/complainant, but the learned Magistrate, by an order dated 14.09.2018 passed in CrI.M.P.No.3168 of 2018, dismissed the said petition with a finding that since the offences alleged in the complaint come under warrant case, the 2nd respondent/complainant cannot be permitted to withdraw the complaint under Section 257 Cr.P.C. Aggrieved by the same, the 2nd respondent/complainant filed CrI.R.P.No.275 of 2018 before the I-Additional Metropolitan Sessions Judge, Hyderabad and the same was dismissed by an order dated 19.10.2018. Therefore, having no other option, the petitioners/A1 and A9 to A15 filed the present Criminal Petition seeking to quash the proceedings in C.C.No.326 of 2017.

Heard learned Counsel for the petitioners/A1 and A9 to A15, learned Additional Public Prosecutor for the 1st respondent-State and the learned Counsel for the 2nd respondent/complainant.

Learned Counsel for the petitioners/A1 and A9 to A15 would submit that after filing of the private complaint, both the parties have entered into a comprehensive settlement to settle all civil and criminal disputes including the above case and that the 2nd respondent/ complainant has agreed to withdraw the above case. It

is further submitted that the 2nd respondent/complainant filed a petition under Section 257 of Cr.P.C. before the learned Magistrate to withdraw the complaint pursuant to the settlement arrived at between the parties, but the same has been dismissed, on the ground that the case is non-compoundable and even the revision filed against the said order has also been dismissed by the learned I-Additional Metropolitan Sessions Judge at Hyderabad. It is further submitted that no purpose would be served in continuing the case as the parties have entered into a settlement and the 2nd respondent/complainant has agreed to withdraw the case and also taken steps to withdraw the complaint. Continuation of proceedings will also cause prejudice to the petitioners/ A1 and A9 to A15 and it will be a futile exercise as the 2nd respondent/complainant itself interested in withdrawing the case. It is also submitted that the case in C.C.No.326 of 2017 relates to a commercial matter with an essential civil flavour and the parties having settled the same, this Court has jurisdiction to quash the same. In support of his contention, he relied on the judgment of the Apex Court in *Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another*¹.

Learned Counsel appearing for the 2nd respondent/complainant admitted that the parties have settled the matter and the 2nd respondent/complainant has also filed an application under Section 257 of Cr.P.C., to withdraw the complaint, but the same was

¹ (2017) 9 SCC 641

dismissed by the learned Magistrate, which was also confirmed by the learned Sessions Judge in a revision filed by the 2nd respondent/complainant. He further submits that the 2nd respondent/complainant has no objection for quashing the proceedings against the petitioners/ A1 and A9 to A15.

In *Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another (1 supra)* the Apex Court held as under:

“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 in so far 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.”

In the instant case the offences alleged against the petitioners/ A1 and A9 to A15 are under Sections 166, 166A, 206, 409, 420, 421, 422, 424, 120-B read with Section 34 of I.P.C., which are not grave in nature; the application filed by the 2nd respondent/complainant seeking withdrawal of the complaint was dismissed on technical grounds and that the 2nd respondent/complainant, has no objection for quashing the proceedings against the petitioners/A1 and A9 to A15, as the parties have settled their disputes both civil and criminal.

Having regard to the principles laid down by the Apex Court in *Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another (1 supra)* and since the matter has already been settled and the 2nd respondent/complainant has no objection to quash the proceedings against the petitioners/ A1 and A9 to A15, I am of the considered view that continuation of criminal proceedings against the petitioners/ A1 and A9 to A15 will be a futile exercise and would amount to abuse of the process of Court.

For the aforementioned reasons, the Criminal Petition is allowed and the proceedings in C.C.No.326 of 2017 on the file of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, against the petitioners/ A1 and A9 to A15 for the offences punishable

under Sections 166, 166A, 206, 409, 420, 421, 422 and 424 read with Sections 120-B and 34 of I.P.C., are hereby quashed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

09.12.2019

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