

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.A.No.2 of 2018 in CrI.R.C.No.1983 of 2018
and
CRIMINAL REVISION CASE No.1983 OF 2018

COMMON ORDER :

Criminal Revision Case No.1983 of 2018 was filed by the appellant in Criminal Appeal No.61 of 2010 on the file of the learned VII Additional Sessions Judge, Bodhan, aggrieved by the judgment dated 22.04.2014 passed therein confirming the conviction and sentence visited upon him by the learned Judicial First Class Magistrate, Banswada, in C.C.No.308 of 2008, on 27.07.2010.

2. The allegation against the petitioner was that he had committed an offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'Act of 1881'). He was convicted of the said offence and sentenced to undergo rigorous imprisonment for two years apart from paying a fine of Rs.5,000/-, in default of which he was to undergo simple imprisonment for three months.

3. While so, it appears that the well-wishers of the petitioner/accused, who is presently lodged in the District Jail, Nizamabad, settled the matter with the first respondent/complainant and in terms thereof, the first respondent/complainant filed I.A.No.2 of 2018 in this criminal revision case to permit compounding of the offence. In the affidavit filed in support of this I.A., the first respondent/complainant stated that he had settled the issue with the friends and well-wishers of the revision petitioner and in terms thereof, he was paid a sum of Rs.40,000/- (Rupees Forty Thousands only) on 20.10.2014. He further stated that in the light of the settlement arrived at and the amount already paid to him, he had no further

grievance or claim against the petitioner and that the offence may be compounded by setting aside the judgments of the Courts below.

4. The first respondent/complainant is present in person and produced his Income-Tax PAN card, bearing No.AFLPNO189F, in proof of his identity. He reiterates in person what was stated by him in the supporting affidavit referred to *supra*. Though an offence under Section 138 of the Act of 1881 cannot be compounded under Section 320 CrPC, the inherent power vesting in this Court under Section 482 CrPC would not be subject to the constraints of Section 320 CrPC, in the light of the law laid down by the Supreme Court in **GIAN SINGH V/s. STATE OF PUNJAB**¹. The observations of the Supreme Court therein read as under:

‘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 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

¹ [(2012) 10 SCC 303 : (2013) 1 SCC (CrI) 160]

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 pre-dominantly civil flavour stand on 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, 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.'

5. In the light of the aforestated settled legal position, this Court is of the view that no purpose would be served by adjudicating the issues arising out of the judgments of the Courts below, when the parties thereto have amicably settled the matter.

6. In that view of the matter, I.A.No.2 of 2018 is ordered. In consequence, CrI.R.C.No.1983 of 2018 is allowed setting aside the judgment dated 22.04.2014 passed in Criminal Appeal No.61 of 2010 by the learned VII Additional Sessions Judge, Bodhan, confirming the judgment dated 27.07.2010 in C.C.No.309 of 2008 passed by the

learned Judicial Magistrate of First Class, Banswada. The petitioner-accused shall be set at liberty forthwith, if he is not required in any other case.

Pending I.As. in this revision, if any, shall stand closed in the light of this final order.

23rd April, 2019
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SANJAY KUMAR, J

