



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD)No.13267 of 2020

D.Vijay Ananth

...Petitioner/Accused No.4

vs.

1)The State represented through
The Sub Inspector of Police,
City Crime Branch,
Madurai City,
Madurai.

(Crime No.35 of 2020)

...1st Respondent/Complainant

2)Mahalingam

...2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to quash the FIR made in Crime No.35 of 2020 on the file of the 1st respondent/police in so far as the petitioner is concerned.

For Petitioner	: Mr.Isaac Mohanlal for M/s.Issac Chambers
For R1	: Mr.V.Neelakandan Additional Public Prosecutor
For R2	: Mr.T.Balakrishnan

O R D E R

This Criminal Original Petition has been filed to quash the FIR made in Crime No.35 of 2020 on the file of the 1st respondent/police in so far as the petitioner is concerned.

2.The allegation in the FIR is that the property in S.No.251/3 to an extent of 54 cents in Madakulam Village, Duraisamy Nagar, Bye Pass Road, Madurai, belongs to four persons namely, Pachaiammal, Periyalakshmi, Ammachiammal and Chinnalakshmi @ Lakshmi. Out of them, Pachaiammal and Periyalakshmi are no more and Chinnalakshmi @ Lakshmi relinquished her share in favour of Ammachiammal by a release deed dated 21.03.2013. Out of 54 cents, Ammachiammal sold out 25 cents to A1/Senthilkumar, 19 cents to A2/Palanikumar and 10 cents to A3/Prakash. The accused 1 to 3 proposed to sell the said properties to the 2nd respondent/defacto complainant and his family members. The 2nd respondent after verification of the documents, wanted his vendors to obtain a release deed from other legal heirs who are having right over the subject property. Since many of other legal heirs were not willing to come forward, the accused 1 to 3 persons fabricated the said documents by impersonation and A1 and A3 sold their 35 cents to the 2nd respondent and A2 gave power of attorney for the remaining 19 cents in favour of one K.A.Sekar, Karur as the entire amount was not paid. It is alleged in the complaint that the accused persons conspired together and created a



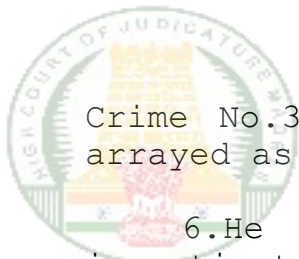
fabricated release deed and cheated the 2nd respondent. Hence, on the complaint of the 2nd respondent, FIR in Crime No.35/2020 under Sections 120B, 465, 466, 467, 468, 471, 419 and 420 IPC was registered against accused 1 to 3 and also against the Sub Registrar, Joint-IV, Madurai South, Madurai District/A4. The petitioner/A4 has filed the present petition to quash the FIR.

3.The learned counsel for the petitioner would state that the crux of the complaint is four fold. Firstly, as regards fabrication of release deed, he would state that it is the responsibility of the identifying witnesses as per the Standing Order No.471(A) of Registration Department and the same has been affirmed by the Circular of Director General of Police, Law & Order, dated 02.09.2001 on the basis of the submission made by the Inspector General of Registration in Crl.O.P.No.17055 of 2007 dated 30.08.2007. Secondly, regarding the fraudulent registration of release deed dated 29.01.2019, he would state that the petitioner is duty bound to register any document presented for registration unless the same comes within Rule 162 of the registration rules and Standing Order 238(B) and according to the petitioner, he has not registered the said document and he had released the pending document on the satisfaction of stamp duty and registration fee and his role is only to verify whether the required stamp duty and registration fee is paid or not. Thirdly, on the allegation that the cancellation of power of attorney deed by the 2nd accused without putting the power holder on notice, it is stated that it can be done without notice to the agent by the principal. Lastly, as to the fabrication made by the accused 1 to 3 after return of release deed dated 29.01.2019, the learned counsel would state that the petitioner cannot be found fault with for the same, as fabrication has been done by the accused after return of the document.

4.The learned counsel for the petitioner would further state that now the 2nd respondent has come to know that the entire commission of offence has been made out only by the accused 1 to 3 and therefore, he does not want to prosecute the complaint as against the petitioner/A4 and he has compromised the matter and has filed a joint compromise memo expressing no objection to quash the FIR in respect of the petitioner. Thus, he would pray to quash the FIR in respect of the petitioner by recording the above compromise.

5.The 1st respondent/police has filed a counter affidavit and would state that the petitioner has obtained anticipatory bail in Crl.O.P.No.13150/2019 and the 1st respondent moved a petition seeking cancellation of bail granted to the accused 1 to 3 in Crl.O.P.Nos.16955 and 16996 of 2020 which was disposed of by order dated 20.05.2020 holding that the defacto complainant is a bigger victim and the loss suffered by him is independent and is constituted a fresh cause of action and also directed to record a fresh statement from the defacto complainant and register an FIR.

<https://hcrs.ecourts.gov.in/services/> In the said direction, the present FIR has been registered in



Crime No.35 of 2020, wherein, the petitioner has been once again arrayed as A4.

6.He would further state that during the pendency of the investigation in earlier Crime No.21 of 2019 at the instigation of A2 and A3, the petitioner registered a cancellation of release deed said to have been executed by the alleged bogus legal heirs and right from the beginning, this petitioner has colluded with A1 to A3 by registering the bogus release deed and also by registration of the subsequent cancellation of bogus release deed and the investigation revealed that the petitioner has played a major role. The petitioner is trying to evade the investigation and did not produce the hard disk of CCTV footage from his office and refused to co-operate with the investigation apprehending arrest in the present crime. The 1st accused has given a confession statement stating that he has given a sum of Rs.9,00,000/- to the petitioner as bribe for registering the documents and the confession of other accused also reveals that the petitioner is having close contact with other accused.

7.Heard the learned Senior Counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondent/police.

8.Though the 1st respondent/police has filed counter affidavit and would state about the manner in which the registration had taken place, the petitioner has specifically stated that he has not registered the document and he has only released the pending document and his role is only to verify whether the document is duly stamped. This contention of the petitioner cannot be shut out. While 1st respondent filed a petition for cancellation of anticipatory bail granted to A1 to A3, the anticipatory bail granted to the petitioner was not sought to be cancelled as the 1st respondent knew that the petitioner had no role to play in the present crime. On going through the entire record, there is no specific allegation in the FIR as to the role played by the petitioner. Now the 2nd respondent/defacto complainant himself has filed a compromise memo stating that the entire commission of offence has been made only by the accused 1 to 3 and therefore he does not want to prosecute the complaint as against the petitioner and he has compromised the matter and filed a joint compromise memo expressing no objection to quash the FIR in respect of the petitioner alone. The other allegations stated by the 1st respondent are without any material evidence. It is also stated that the petitioner herein has tried to evade the investigation and did not produce the hard disk of CCTV footage from his office and refused to co-operate with the investigation and therefore, the respondent/police would state that the petitioner has also played a role.



9.The compromise memo said to have been filed is in the form of affidavit which reads as follows:-

'1.It is submitted that on the complaint preferred by the 2nd respondent herein, the 1st respondent police registered a case in Cr.No.35/2020 on 04.06.2020 for the alleged offences U/s.120B, 465,466,467,468,471,419 & 420 of I.P.C. against four accused in which the petitioner who was a Sub Registrar at the relevant period arrayed as 4th accused.

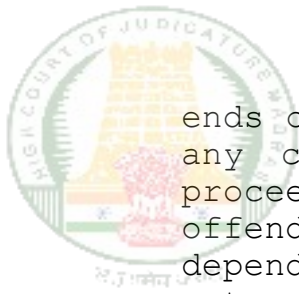
2.It is submitted that after the registration of case, the 2nd respondent came to know that the entire fraud has been committed by the other 3 accused. Hence the defacto complainant namely the 2nd respondent does not want to prosecute the petitioner further who was Sub Registrar at the relevant period. Hence the second respondent has no objection to quash the FIR made in Crime No.35 of 2020 on the file of the 1st respondent police as against the petitioner alone. Hence, both the parties seek indulgence of this Hon'ble Court to accept the subject Joint Compromise Memo and allow the above Criminal Original Petition. Unless the same is ordered, both the parties are put to irreparable loss and hardship.'

10.The 2nd respondent/defacto complainant would specifically represent before this Court that the offence has been committed only by the accused 1 to 3 and the petitioner being the Sub Registrar, he is not aware of anything and therefore, the 2nd respondent does not want to prosecute the case against the petitioner.

11.It is a 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.

12.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



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."

13. 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.

<https://hcservices.courts.gov.in/hcservices/> 2015. 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."

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14. 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 character 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.''

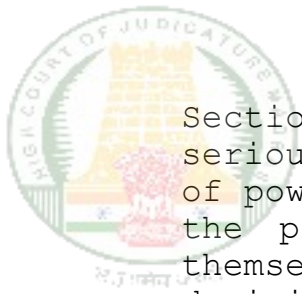
15. In **State of Madhya Pradesh v. Laxmi Narayan [AIR 2019 SC 1296]**, the Hon'ble Supreme Court, considering all the above judgments, has held as follows:

"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

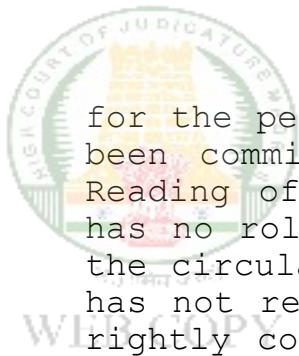


Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because 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."

16.This Court is aware that 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. But at the same time, the Court should also aware whether the possibility of conviction is remote and bleak and continuation of 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 and the present case is one of the above.

17.Perusal of record shows that even the 1st respondent has filed an application to cancel the anticipatory bail granted in respect of A1 to A3 alone. The whole reading of the FIR does not constitute any offence against this petitioner. The petitioner is



for the petitioner, the manner in which the happenings said to have been committed in the above case can be divided into four fold. Reading of the entire happenings goes to show that the petitioner has no role to play. The petitioner's powers are conferred as per the circulars of the department and according to the petitioner, he has not registered the document and he has only released it and as rightly contended by the learned counsel for the petitioner, while releasing the document, the power is confined only to see whether the stamp duty has been correctly paid or not. Though counter affidavit has been filed by the 1st respondent, no material has been placed before this Court to show the involvement of the petitioner in the above offence. Even the whole reading of the FIR does not constitute the offence as against this petitioner. The contention that the petitioner played a role is without any material evidence. All the more, the petitioner is placed under suspension and the allegation that the petitioner did not co-operate to give the CCTV footage is also not acceptable as some other person was in-charge in his place. Except the confession statement, there is no other evidence and therefore, in my opinion, considering the entire facts and circumstances of the case and considering the compromise memo filed in this case, though it is a compromise memo, it is more of an affidavit to state that the petitioner has no role to play and therefore, in my opinion, no fruitful purpose would be achieved in allowing the FIR to proceed against the petitioner. All the more, the 2nd respondent/defacto complainant has appeared before this Court and has stated that the entire commission of offence has been made only by A1 to A3 and he does not have any intention to prosecute the complaint as against the petitioner and therefore, to secure the ends of justice and to prevent abuse of process of any court, this Court is inclined to quash the FIR.

18. Accordingly, the FIR made in Crime No.35 of 2020 on the file of the 1st respondent/police, is quashed and the Criminal Original Petition is allowed. The compromise memo shall form part and parcel of this order.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ENCL:Xerox Copy of Joint Compromise Memo
To

1)The Sub Inspector of Police,
City Crime Branch,
Madurai City,

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



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

+1CC to M/s.Issac Chambers,SR.No.26754 dated 22/12/2020

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