



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD)No.13646 of 2020

and

Crl.M.P(MD)No.6288 of 2020

WEB COPY

1) P.Palanikumar

2) S.Madhanrajan @ Madhan ...Petitioners/Accused No.1&2

vs.

1) The Inspector of Police,
Balamedu Police Station,
Madurai District.

(Crime No.39/2020)

...1st Respondent/Complainant

2) A.Kannan

...2nd Respondent/Defacto Complainant

3) P.Manoranjani

...3rd Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the First Information Report in Crime No.39 of 2020 dated 04.02.2020 on the file of the respondent No.1 for the alleged offences U/s. 366(A) of I.P.C and Section 5(i) and 6 of Prevention of Children from Sexual Offences Act registered by the Respondent No.1 and quash the same as illegal.

For Petitioners : Mr.T.Thirumurugan

For R1 : Mr.V.Neelakandan

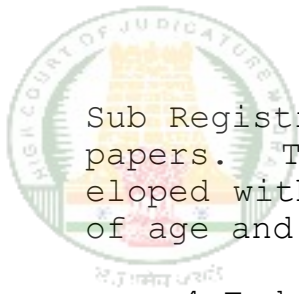
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the First Information Report in Crime No.39 of 2020 dated 04.02.2020 on the file of the respondent No.1 for the alleged offences under Section 366(A) of I.P.C and Section 5(i) and 6 of Prevention of Children from Sexual Offences Act registered by the Respondent No.1 and quash the same as illegal.

2.The allegation in the FIR registered against the petitioners is that on 04.02.2020, the 1st petitioner kidnapped the 3rd respondent who is the daughter of the 2nd respondent/defacto complainant aged 17 years and had misbehaved with her physically.

3.The learned counsel for the petitioners would state that it is a case of elopement and the 1st petitioner and the 3rd respondent fell in love with each other and the same was resisted by the 2nd respondent/father of the 3rd respondent since both of them belonged to different community and the 3rd respondent on her own volition went along with the 1st petitioner and the marriage between the 1st petitioner and the 3rd respondent had taken place on 13.07.2020 at Thillapuri Amman Kovil, Karur Road, Dharapuram(Urban), Dharapuram, Tiruppur and the marriage certificate dated 15.07.2020 issued by the



Sub Registrar, Dharapuram, has also been enclosed in the typed set of papers. The learned counsel would also state that the victim girl eloped with the 1st petitioner and waited for completion of 18 years of age and on completion of 18 years, the marriage had taken place.

4. Today, the 3rd respondent/victim girl and the petitioners/accused are present before this Court and they are identified by the learned counsel for the petitioners. The victim girl has affirmed before this Court that she and the 1st petitioner loved each other which was not accepted by her father since they belonged to different community and she voluntarily went along with the 1st petitioner and married him after attaining majority on 13.07.2020. The 2nd respondent/defacto complainant/father of the victim girl is not present before this Court as he has not accepted the above marriage. The learned Additional Public Prosecutor who was present in the Court had also verified the identity of the petitioners and the 3rd respondent and would state that he has no objection to allow this petition by recording the affidavit of the 3rd respondent.

5. Heard the learned counsel for the petitioners as well as the learned Additional Public Prosecutor for the 1st respondent/police. There is no appearance by the 2nd respondent either in person or through counsel.

6. Perusal of the SSLC mark statement of the victim girl and the marriage certificate would show that the date of birth of the victim girl was 15.06.2002 and on the date she left from the house, she was 17 years and 8 months. On the complaint of the father of the victim girl, case has been registered in Crime No.39 of 2020 dated 04.02.2020 on the file of the respondent No.1 for the alleged offences under Section 366(A) of I.P.C and Section 5(i) and 6 of Prevention of Children from Sexual Offences Act. It is seen that she had waited to attain majority and on attaining majority, she had married the 1st petitioner and the marriage has been legally registered by the Sub Registrar, Dharapuram, and she has filed an affidavit to that effect narrating the entire facts which shall form part and parcel of this order. Though the defacto complainant is not present before this Court, this Court is satisfied as to the well being of the victim girl with the 1st petitioner.

7. 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



8.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."

9.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."

10. 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.

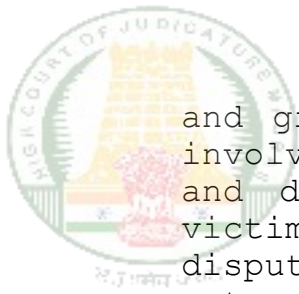
(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While 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



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.''

11. 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;

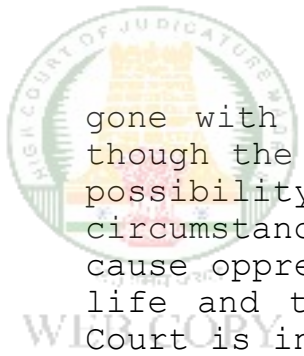
iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

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."

12. So, keeping the above principles in mind and taking into consideration the facts and circumstances of the present case on hand, where it is a clear case of elopement and the victim girl

<https://hccourtrecords.gov.in/cases/>



gone with the 1st petitioner and now they are married and settled, though the defacto complainant is not present before this Court, the possibility of conviction is also remote and bleak. In the above circumstances, continuity of the criminal proceedings would only cause oppression and prejudice to the parties who are living a happy life and therefore, in order to secure the ends of justice, this Court is inclined to quash the criminal proceedings.

13. Accordingly, the FIR in Crime No.39 of 2020 on the file of 1st respondent police, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar (CS)

To

1) The Inspector of Police,
Balamedu Police Station,
Madurai District.

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

+1CC to Mr.T.Thirumurugan, Advocate, SR.No.25624 dated 15/12/2020

Crl.O.P.(MD)No.13646 of 2020
DATED : 14.12.2020

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