

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 18/08/2021

Order Passed on : 25/10/2021

W.P.(Cr.) No.228 of 2016

- Nimish Agrawal S/o Shri Sunil Agrawal, Aged About 37 Years R/o 1/45, Nehru Nagar (East), Bhilai, P.S. Supela, District Durg, Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary- Department Of Home (Police) Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Superintendent Of Police, District Durg, Chhattisgarh
3. Station House Officer, Police Station Supela, Bhilai, District Durg, Chhattisgarh
4. Station House Officer, Mahila Police Station, District Durg, Chhattisgarh
5. Smt. Ruhi Agrawal, W/o Nimish Agrawal, Aged About 32 Years Present Address- R/o C/o Shri Vijay Agrawal, "Satyam Shivam Sunderam", Street No.3, Deepak Nagar, Durg, Chhattisgarh

---- Respondents

For Petitioner : Mr. Manoj Paranjpe, Advocate.

For respondent No.01 to 04 : Mrs. Hamida Siddiqui, Dy. A.G.

For respondent No.05 : Mr. Jaydeep Singh Yadav, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

25/10/2021

1. This petition under Article 226 of Constitution of India has been brought praying to quash the F.I.R. dated 07.05.2016 registered as Crime No.415/2016. The facts of the case are these that the petitioner and the

respondent No.5 are husband and wife, their matrimonial life could not go on peacefully. The efforts of reconciliation between them failed. Subsequent to which, the respondent No.5 has given a written complaint to respondent No.03 on 07.05.2016, on the basis of which F.I.R. has been lodged against the petitioner alleging the commission of offences under Sections 498A, 377, 323, 34 of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act.

2. It is submitted by learned counsel for the petitioner that subsequent to lodging of F.I.R., the petitioner and his family and respondent No.5 and her father negotiated a compromise on 12.05.2016, in which, it is stated that there is no possibility of reconciliation between petitioner and respondent No.5, therefore, it was agreed that petition will be filed for divorce and it was also agreed that both the parties shall withdraw the cases between them. It was according to the terms of agreement that the petitioner and others had agreed to pay Rs.3,05,00,000/- to complainant side regarding which a cheque of value Rs.2,45,00,000/- was issued on 10.08.2016 and a second cheque of Rs.60,00,000/- was issued on the same date, therefore, the petitioner side has performed their part. It was also agreed that respondent No.5 shall withdraw her complaint dated 07.05.2016 by presenting a compromise before the Court. These were the main terms of agreement apart from the other terms agreed between them.
3. It is further submitted that the respondent No.01 appeared before the Court of 12.05.2016 and filed an affidavit that a compromise has taken place with the petitioner and she does not want any prosecution against him, therefore, she has no objection in grant of bail to him. Respondent No.05 then filed an affidavit dated 13.05.2016 before the Court of First Additional Sessions Judge, Durg, stating that subsequent to her

compromise with the petitioner and his family, she does not want any prosecution against the petitioner and others. This affidavit was filed in support of this bail application.

4. It is again submitted that filing of this affidavit shows that it was a conscious agreement and the respondent No.5 had willingly and freely given consent for such agreement. The demand drafts issued for payment according to the terms of compromise have been en-cashed by the respondents.
5. It is again submitted by learned counsel for the petitioner that this Court has also acknowledged the agreement of settlement between the parties which is reflected in the order sheet dated 20.09.2016 and stay order was granted. Further, this Court has vide order dated 01.02.2017 withdrawn the stay order mentioning that the consent for the agreement has been withdrawn by the respondent No.5. However, the agreement between the parties still exists, therefore, it is a fit case in which the F.I.R. with respect to offences under Section 498A, 377, 323 and 34 of I.P.C. and Section 3 and 4 of Dowry Prohibition Act is liable to be quashed.
6. Reliance has been placed on the judgments of Supreme Court in case of Bank of India & Anr. Vs. K. Mohandas & Ors. and other batch of cases reported in (2009) 5 SCC 313, Yogendra Rathore & Ors. Vs. Padma Ben & Anr. reported in 1997 LawSuit (MP) 530, Bafati Vs. Ram Gopal & Ors. reported in 1994 SCC OnLine MP 91, Jagdish Valecha Vs. State of M.P. & Ors. reported in 2018 LawSuit (MP) 926 and Mangala Waman Karandikar (D) Tr. Lrs. Vs. Prakash Damodar Ranade reported in 2021 SCC OnLine SC 371.
7. Relying on the judgment of Supreme Court in the case of B.S. Joshi &

Ors. Vs. State of Haryana & Anr. reported in 2003 (4) SCC 675. It was held that “it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.”

8. Reliance has also been placed on the judgment of Supreme Court in the case of Gian Singh Vs. State of Punjab & Anr. reported in (2012) 10 SCC 303.
9. It is further submitted that the order of this Court in Criminal Revision No.1415 of 2019 does not create a bar on consideration for quashment of the F.I.R. and the criminal proceedings under Article 226 Constitution of India or under Section 483 of Cr.P.C. It is also submitted that the respondent No.5 has admitted about the agreement dated 12.05.2016, therefore, it is a fit case where the prayer of the petitioner should be allowed to grant relief in this petition.
10. Learned State counsel appearing for respondent No.1 to 4 opposes the arguments made by learned counsel for the petitioner and submits that the F.I.R. made against the petitioner and others makes out a prima-facie case, which reflects the commission of offences registered against them. The offences under Section 498A, 377, 323 and 34 of I.P.C. and Section 4 and 6 of Dowry Prohibition Act are not compoundable. There may be an agreement between the parties for settlement of the disputes, but that cannot be made a ground for quashment of the F.I.R. against the petitioner. It is further submitted that the stage of the criminal

proceeding has advanced, the case is now pending for trial in which the charges have been framed against the petitioners and others and looking to this fact that the respondent No.5 is now raising a contest on this ground that she had not willingly and freely given consent for the compromise, which has been taken notice of by this Court in passing order dated 01.02.2017 by which the stay order granted to the petitioner was recalled. Therefore, there is no case present in favour of the petitioner, the petition is liable to be dismissed.

11. The learned counsel for respondent No.5 vehemently opposes the submissions made on behalf of the petitioner. It is submitted that the F.I.R. was lodged against the husband of respondent No.5 along with two other co-accused persons. The respondent No.5 denies compliance of terms of compromise and it is submitted that in fact the amount paid by the petitioner side was in fact regarding business transaction and therefore, it was not for fulfillment of the terms of compromise. This has been observed by this Court in the order dated 01.02.2017. The respondent has filed additional documents, which includes the statement of the petitioner himself and the Civil M.J.C. No.02/2017, in which he has admitted that the agreement dated 12.05.2016 has been terminated and it is also submitted that after framing of charges against the petitioners and others, Criminal Revision No.1415 of 2019 was filed, which has been disposed off vide order dated 11.06.2020 and the revision petition of the petitioners and others was dismissed. The petitioners and others had relied upon the compromise dated 12.05.2016 in the Revision Petition which has been considered before the dismissal of the criminal Revision, therefore, the same ground cannot be considered again in the present Writ Petition.

12. Reliance has been placed on the judgment of Supreme Court in the

case of Shimbhu & Anr. Vs. State of Haryana reported in (2014) 13 SCC 318, in which it was held that rape is a non-compoundable offence and it is an offence against the society and it is submitted that in the case of State of Madhya Pradesh Vs. Madanlal reported in (2015) 7 SCC 681 which was similarly held by the Supreme Court.

13. It is also submitted that the Supreme Court has in the case of Gian Singh (Supra) held that the Court must be of the opinion, that the continuation of criminal proceeding will be an exercise in futility which is not a case present here, because the respondent No.5 is keen in prosecuting the petitioner and others in the case registered against them.

14. It is also submitted that the present petition which has been brought for quashing the F.I.R. has become infructuous after the filing of charge-sheet. The charges framed against the petitioners and others have been upheld by this Court and the same has been also upheld by the Supreme Court in S.L.P Criminal No.4800 of 2020 vide order dated 17.11.2020, hence, the present petition is without any substance, which may be dismissed.

15. Learned counsel for the petitioner has made submissions in reply and placed reliance on the judgment of Supreme Court in the case of Bank of India & Anr. Vs. K. Mohandas & Ors. and batch of other cases reported in (2009) 5 SCC 313, in which it was held that true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Therefore, if a contract is clear and unambiguous, its true effect cannot be changed subsequently by the course of conduct between the parties.

16. Reliance has also been placed on the judgment of M. P. High Court in

the case of Yogendra Rathore & Ors. Vs. Padma Ben & Anr. reported in 1999 (1) MPJR 619, Bafati Vs. Ram Gopal & Ors. reported in 1994 SCC OnLine MP 91, Jagdish Valecha Vs. State of MP & Ors. reported in 2018 LawSuit (MP) 926 and the judgment of Supreme Court in the case of Mangala Waman Karandikar (D) Tr. Lrs. Vs. Prakash Damodar Ranade reported in 2021 SCC OnLine SC 371. It is submitted that the agreement between the parties was complete and the petitioners and others have performed their part. Therefore, the respondent No.5 is bound to perform her part. Hence, this petition may be allowed and relief may be granted to the petitioner.

17. Considered on the submissions, there appears to be no denial that agreement dated 12.05.2016 has taken place between the parties. It is the claim of the petitioner and others that the payment has been made according to terms of agreement to respondent No.5 and others which is being disputed by the respondent No.5, on the ground that the payment that has been made by the petitioners was with respect to the business investments. There is a clear statement of respondent No.5 that the respondent No.5 did not want a compromise and it was under threat and coercion, she was forced to sign agreement and thus, the consent was not freely given by the respondent No.5 in the agreement dated 12.05.2016.

18. Section 24 of the Contracts Act provides as follows:-

“24. Agreements void, if considerations and objects unlawful in part.
—If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.”

19. In view of the provision under Section 24 of the Contracts Act one of the terms of the agreement was that the respondent No.5 wants to withdraw the criminal complaint against the petitioner after receiving payment for

the same, cannot be regarded as any lawful term. As the agreement cannot be enforced under any law.

20. The case of Gian Singh (Supra), it was held in paragraph 58 as follows:-

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under [IPC](#) or offences of moral turpitude under special statutes, like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

21. The judgment in the case of B.S. Joshi (Supra) has been discussed in the case of Gian Singh (Supra) and it was held that the B.S. Joshi case

was not correctly decided. The case of Mohd. Shamim & Ors. Vs. Nahid Begum (Smt.) And Anr. reported in (2005) 3 SCC 302, it was observed by the Court that settlement was arrived at by the intervention of the judicial officer on the rank of Additional Sessions Judge and therefore, the contention of the respondent's wife regarding her disagreement with the settlement was rejected. In the present case, the agreement that has taken place between the parties the terms had been agreed by them in personal capacity and there had not been any intervention of the Court. Only for the reason that the Court granted permission for taking signature of the petitioner and others who were in jail, it cannot be inferred that it was the Court which has mediated in that agreement. Therefore, the ratio laid down in the case of Mohd. Shamim & Ors. (Supra) cannot be held applicable in the present case. In the case of Ruchi Agrawal Vs. Amit Kumar & Ors. reported in (2005) 3 SCC 299, the facts show that the complainant has partially performed the terms of agreement and there was the denial to perform the terms of agreement. This is a finding of fact in the case of Mrs. Usha Badri Poonawalla Vs. K. Kurien Babu & Anr. reported in 2005 SCC OnLine Bom 1078, the decision is based on the finding of facts. The other reliance of the petitioner in the case of P.S. Sethuraman Vs. P. Elavazhagan reported in 2010 (1) MWN (Cr.) DCC 80 is more applicable according to the facts present in this case. Similarly, the observation of the Supreme Court in the case of Satish Mehra s. State (NCT of Delhi) & Anr. reported in (2012) 13 SCC 614 is in this respect that the Court has to held that “where the allegations do not disclose prima facie case and prosecution of accused would result in abuse of process then proceedings can be quashed.” It is to be examined in the present case.

22. The ratio laid down in the case of Gian Singh (Supra) has to be followed

in letter and spirit. The first thing to be seen in such a case is whether there is a settlement of dispute between the parties in present case. Although there is a statement regarding compromise between the parties but the same is being disputed by the respondent No.05, therefore, it cannot be said that the settlement between the parties is complete. Therefore, the terms of agreement in the compromise may be a ground of defence for the petitioner, but that cannot be a ground for quashment of the whole criminal case against them. Without there being any reason to believe that the settlement is complete between the parties, this Court cannot hold that the continuation of proceedings will be an exercise in futility, as the respondent No.5 is intent in prosecute the petitioner and others on the basis of a complaint against them. Apart from that, the case of Gian Singh (Supra) forbids the exercise of inherent power of the High Court in case of heinous and serious offences like murder, rape, dacoity etc. or other offence of mental depravity and special statutes like Prevention of Corruption Act. One of the charges against the petitioner is the charge under Section 377 of I.P.C. regarding commission of unnatural sexual intercourse with the respondent No.5, which is a ground connected with the offence under Section 498 (A) of I.P.C. regarding imparting cruel treatment to the respondent No.5 by this petitioner, therefore, after overall consideration of the facts and circumstances and the case law cited, I am of this view that this is not a fit case, in which the petitioner can be granted relief as prayed by him, therefore, this petition is dismissed and disposed off.

23. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge