

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.04.2021
CORAM:

THE HON'BLE Mr.JUSTICE V.BHARATHIDASAN

Crl.O.P.No.25882 of 2019
and
Crl.MP.No.13776 of 2019

Sanjoy Bhattacharya

... Petitioner

-Vs-

1. State by
The Inspector of Police,
J5, Sastri Nagar Police Station,
Adyar, Chennai.
(Crime No.148 of 2019).

2. Vandana Shree Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure praying to call for the records in Crime No.148 of 2019 dated 17.02.2019 on the file of the 1st respondent police and quash the same.

For Petitioner : Mr.Murugappan
for M/s.G.K.Associates

For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor for R1
Mr.P.V.S.Giridhar for R2

ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.148 of 2019 dated 17.02.2019 on the file of the 1st respondent police and quash the same.

2. The allegation is that, the *de facto* complainant/second respondent herein, and the petitioner met each other in the year 2017, at Ooty and they developed intimacy. Thereafter, the petitioner took the *de facto* complainant to Haridwar, where he was working and had physical relationship with her and she got pregnant. Subsequently, the petitioner severed connection with the *de facto* complainant and also refused to meet her. In the mean time, the *de facto* complainant delivered a girl child, but the petitioner refused to marry her. Hence, the complaint was filed and FIR was registered against the petitioner in Crime No.148 of 2019, for the offences under Sections 323, 328, 376 and 506(i) of IPC. The present Petition has been filed to quash the FIR.

3. The petitioner also filed a petition seeking anticipatory bail and as per the order passed by the Hon'ble Chief Justice dated 27.02.2020, this quash petition is posted along with the anticipatory bail petition filed by the petitioner.

4. Earlier, when the matter came up for hearing, the learned counsel for the petitioner as well as the *de facto* complainant submitted that there is a likelihood of settlement between the parties and sought adjournment and the matter has been adjourned several occasions and finally listed today for further orders.

5. Today, when the matter is taken up for hearing, the petitioner, the *de facto* complainant and her father along with their respective counsel present before this Court and submitted that the matter has been settled between the parties and they have also entered into Memorandum of Understanding. As per the Memorandum of Understanding, the petitioner agreed to pay a sum of Rs.40,00,000/- [Rupees Forty Lakhs only] to the *de facto* complainant and the minor daughter, out of which, the petitioner has agreed to pay a sum of Rs.20,00,000/- [Rupees Twenty lakhs only] to the *de facto* complainant and he will deposit the remaining amount of Rs.20,00,000/- [Rupees Twenty lakhs only] in a Fixed Deposit in favour of the minor child in four(4) instalments and also submitted that he has handed over a cheque for a sum of Rs.20,00,000/- [Rupees Twenty lakhs only] to the *de facto* complainant today.

6. The learned counsel for the second respondent/*de facto* complainant and the *de facto* complainant, who were present in this Court also admitted that the matter has been settled between the parties and the second respondent/*de facto* complainant has received a cheque for a sum of Rs.20,00,000/- and further submitted that as the matter has been settled between the parties, she is not interested in proceeding with the case and hence, the FIR may be quashed.

7. The Memorandum of Compromise entered into between the parties placed before this Court and the same is extracted as below:

'MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding is entered into on this the 1st day of April 2021:

Between:

Ms.Vandhana Shree, aged 33 years, D/o.Ramasubramani residing at No.153, Selvavinayagar Avenue, Ellaiamman Koil Street, Vanandurai, Shastri Nagar, Adyar, Chennai-600 020 hereinafter referred to as "First Party";

and

Mr.Sanjoy Bhattacharya aged 53 years,

S/o.S.C.Bhattacharya, residing at No.25, Type 4, Sec 3, BHEL, Ranipur, Haridwar, Uttarkhand hereinafter referred to as "Second Party";

1. The First Party has preferred a complaint in Cr.No.148 of 2019 pending on the file of the Inspector of Police, J5, Sastri Nagar Police Station, Adyar, Chennai for offence of "Rape" among others. The Second Party has filed

Crl.O.P.25882 of 2019 seeking to quash the FIR in Cr.No.148/2019 and Crl.O.P.No.7133 of 2019 seeking Anticipatory Bail in the event of arrest before the Hon'ble High Court, Madras. The First Party has filed intervenor petition and has entered appearance in the above two Crl.OPs.

II. And Whereas, when the above Crl.OPs came up for final hearing before the Hon'ble High Court, Madras, the parties arrived at an amicable settlement and have entered into the Memorandum of Understanding. The parties have also concurred and promised to cooperate with the provisions of the present Memorandum of Understanding and implementation thereof;

III. NOW THIS MEMORANDUM OF COMPROMISE WITNESSETH AS BELOW:

The sequence of steps to implement the present Settlement shall be as follows:

a) The Second Party will issue Cheque dated 30.03.2021 bearing No.374072 for Rs.20,00,000/- (Rupees Twenty Lakhs Only) to be paid in the name of First Party (Ms.Vandhana Shree).

b) The Second Party will pay the balance sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only in Four Fixed Deposits (either in Nationalised Banks or Postal deposits or Child welfare Schemes of the Government) of Rs.5,00,000/- (Rupees Five Lakhs only) each in favour of the child (Marushika), dated 02.05.2021, 02.06.2021, 02.07.2021 and 02.08.2021 which would earn the maximum available interests. The periodical interest will be credited to the designated account of the First Party (who is the natural guardian of the child) till the child attains majority. The interest sum shall be utilised for the welfare of the child by the First Party. In case of failure of the Second Party to comply with the Fixed Deposits obligation as stated above in favour of the child, the counsel for the First Party will issue 10 days' notice to the Second Party for compliance. If the same is still not complied by the Second Party for compliance. If the same is still not complied by the Second Party within

10 days from the date of receipt of the notice, it is open to the First Party to approach the Hon'ble High Court, Madras for revival of Crl.O.P.No.25882 of 2019 & Crl.O.P.No.7133 of 2019.

c) The First Party undertakes to co-operate for the quashing of Crime No.148/2019 pending on the file of Inspector of Police, J5, Sastri Nagar Police Station, Adyar, Chennai towards closing criminal proceedings against the Second Party.

d) The First Party agrees that the above terms will be the full and final settlement towards herself and her daughter (Marushika) and there will be no existing/future monetary claims or any other claims against each other except for the above-mentioned settlement.

e) The First Party undertakes that she and the child Marushika or her custodian will not initiate any new proceedings of any nature against the Second Party or his heirs.

f) The custody of the Minor Child shall remain with the First Party and she shall be entitled to take all decisions concerning the welfare of the child. In the event of the First Party requiring any acknowledgement, attestation or signatures from the Second Party for the child, in the interest of the child for educational, medical, passport or any other purpose, the same shall be sent to Second Party who in turn will sign the required documents and send them to the First Party via RPAD without any delay.

g) The Compromise is entered into between the parties without any coercion and undue influence.

h) Three sets of the present Agreement are prepared, one for the court and one for each of the two parties. All three agreements shall be treated to be originals.'

8. The petitioner has been implicated for the offences under Sections 323, 328, 376 and 506(i) of IPC, which are all non cognizable offences. Now the question is whether FIR can be quashed based on the settlement between the parties in respect of non compoundable offences. The Hon'ble Supreme Court, in the case of Gian Singh Vs. State of Punjab [2012 (10) scc 303], 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, decoity, 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:

"29.5. 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 the light of the above principles laid down by the Hon'ble Supreme Court, considering the instant case that the petitioner had developed intimacy with the *de facto* complainant and they have also got a female child. Now the petitioner refused to marry the *de facto* complainant and assaulted her as also criminally intimidated her.

11. Perusal of the materials shows that it is a consensual sex between the parties and no *prima facie* case has been made out for the offence under Section 376 of IPC. Other offences are only minor in nature. Now the parties have settled the dispute between themselves and the *de facto* complainant is also not interested in proceeding with the criminal case.

12. In view of the agreement entered into between the parties, continuation of criminal proceedings would put the accused to great oppression and prejudice and no purpose will be served in proceeding with the criminal case against the petitioner. Even if the trial is proceeded, the conviction is remote and bleak.

13. Considering the above facts and circumstances of the case and also the fact that the petitioner has no bad antecedent, this Court is inclined to quash the FIR against the petitioner.

14. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
J5, Sastri Nagar Police Station,
Adyar, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Gokulakrishnan, Advocate SR.NO..21994

AKM/27.04.21/6P-4C/

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