

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3257 of 2018

Monalisa Subhadarshini and others *Petitioners*
versus-
State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
13.07.2022

16. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the criminal proceeding initiated against them vide C.T. Case No.33 of 2015, arising out of E.O.W., Bhubaneswar P.S. Case No.16 of 2015, pending before in the court of P.O., D.C., Odisha Protection of Interests of Depositors (In Financial Establishments) Act (hereinafter referred to as “O.P.I.D. Act”, Cuttack.
3. Heard the learned counsel for the Petitioners, the learned counsel appearing for the Opposite Party No.1 (State-O.P.I.D.). No one appears for the Opposite Party No.2-Informant.
4. As it appears, Petitioners No.1 and 2 along with some accused persons formed a group, namely, Sairam Group and contributing money and amount to the funds and themselves

used to take money from the group and used to repay the same to the group with interest. However, Petitioners No.1 and 2 when took over the management of the said group, diverted the money from the society for the purpose of investing in other business, assuring good return from the same. When the same did not yield good return nor they got their promise, one of the members of group has lodged F.I.R. against the Petitioners in the E.O.W., Bhubaneswar Police Station, which was registered as E.O.W., Bhubaneswar P.S. Case No.16 of 2015 for alleged offences under Section 420, 506 read with Section 34 of the I.P.C. In the meanwhile, entire money of the group having been returned and paid back by the Petitioner No.4, who is the father of the Petitioners No.1 and 2, they have come for quashment of the criminal proceeding. However, the F.I.R. allegation is that the Petitioners assuring them of high returns and also land, received the deposits of Rs.1.5 crore from the members of their group and also other public, but did not comply the same. As such, they stated to have committed the offence under Sections 420, 406, 506 read with Section 34 of the I.P.C. and Section 6 of the O.P.I.D. Act.

5. On enquiry of the Court, learned counsel appearing for the State-O.P.I.D., on instruction, submits that with regard to receipt of the amount of the group and return of the same to the different members of the group. It is also stated that the same has been acknowledged. Informant also filed an

affidavit in this regard. So also it is submitted that besides the members of Sairam Group, no other victims are there in this case.

6. Learned counsel for the Petitioners submits that no case under the O.P.I.D. is made out. As such, E.O.W., Bhubaneswer Police Station could not have taken up the case by registering the case under the O.P.I.D. and submitted the charge sheet. According to him, since the Petitioners, who were the members of the group stated to have not received any deposit and all of them had contributed the money to the group which being invested at the instance of the Petitioner No.1 and 2, in some business for high return, when did not yield desired return, it cannot be stated that an offence under Section 6 of the O.P.I.D. Act was committed by the Petitioners. At best they can be liable for criminal breach of trust. Be that as it may, when the amount has been received back by the members of group and they have no grievance, allowing to continue in such proceeding would be nothing but an abuse of the process of court. Hence, the Criminal Misc. Case be allowed.

7. Learned counsel for the State-O.P.I.D. would submit that it was not the group which received money rather the members of the group, who had kept the money in the group on assurance of getting land and high returns at the instance of Petitioners No.1 and 2, made investment with the accused

persons. Therefore, even though they are individuals and they are coming under the financial establishment, as they had received money from the members of the self-held group assuring them to give land and high returns on their investment. Hence, it is fallacious to say that Section 6 of the O.P.I.D. Act is not attracted in this case. Therefore, the said offence being non-compoundable, this Court should not quash the aforesaid proceeding.

8. However, no material is produced before this Court that those persons regularly received deposits from the members of Sairam Group or any other for supply of the land and/or high returns on their investment, rather it appears that the Petitioners No.1 and 2, who are members of the self-help group, invested the money of the group with assurance of high returns/land. But the same did not yield the promised return. The same amounts to cheating or criminal breach of trust by Petitioners No.1 and 2 in connivance with accused persons with whom the money was invested. Therefore, the implication of the Petitioners under Section 6 of the O.P.I.D. Act is misconceived.

9. Be that as it may, even they have been indicted in the aforesaid case for the offence under Section 6 of the O.P.I.D. Act but the O.P.I.D. Act was brought to protect the interest of the depositors, as such, the offence was earlier compoundable. However, it is no more compoundable now.

But, non-compoundability of an offence alleged does not stand on the way to this Court to quash a prosecution in exercise of its inherent power on the basis of compromise or otherwise, if the facts and circumstances of the case so warrants.

10. The Apex Court in the case of *Narinder Singh and others vrs. State of Punjab and another*, reported in (2014) 6 SCC 466 with regard to quashment of the prosecution on the ground of compromise in exercise of power under Section 482 of Cr.P.C. have held as follows:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. 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 its or the prosecution has collected sufficient evidence, which if proved, would lead to proving 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. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the

parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings / investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after *prima facie* assessment of the circumstances / material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial Court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

11. Reverting back to the case in hand, it is not in dispute that the depositors have already received their money back and they have no more any grievance against the Petitioners. They do not want to proceed against the Petitioners also, as gathered from the counsel for the State-O.P.I.D. Hence, there is bleak chance of conviction in this case.

12. In the aforesaid facts and circumstances and also in view of such authoritative pronouncement in the case of *Narinder Singh and others* (supra), this Court is of the view that allowing prosecution continue in this case would be nothing but an abuse of the process of court.

13. Hence, in exercise of power under Section 482 of Cr.P.C., this Court quash the criminal prosecution launched against the Petitioners vide C.T. Case No.33 of 2015 on the file of the learned P.O., D.C., O.P.I.D. Act, Cuttack. The learned P.O., D.C., O.P.I.D. Act, Cuttack or the Court in seisin over the matter shall on receipt of the copy of this order/production of the copy of this order, do the needful in this regard.

14. With the aforesaid order, this Criminal Misc. Case is disposed of.

15. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge