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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.3181 of 2022

and

Crl.M.P.No.1440 of 2022

Antipas Moses Samuel @ Andiboss ... Petitioner

Vs.

1. The State Rep by Inspector of Police,
P-6, Kodungaiyur Police Station,
Chennai.

2. Mrs.K.Vasanthi ... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to call for the Records in Cr.No.2466/2021 on the file of First Respondent and to quash the proceedings as far as these Petitioners are concerned.

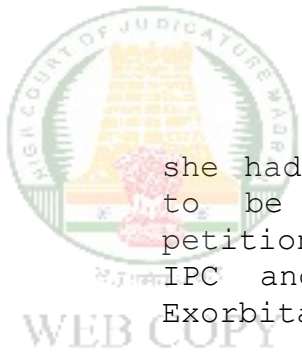
For Petitioner : Mr.D.Manoj Kumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

The petitione has been filed to call for the records in Cr.No.2466 of 2021 on the file of the first respondent and to quash the proceedings as far as this petitioner is concerned.

2. The case of the complainant/second respondent is that she had availed a hand loan of Rs.1,00,000/- from the the petitioner/accused towards education of her son in the year 2019 at an exorbitant rate of interest and she had been paying a sum of Rs.7000/- per month towards interest and in total, she had already paid to the tune of Rs.1,10,000/-, however, the petitioner/accused had demanded more money and in lieu of the loan amount, he had taken the motorcycle of her son and thereby,



she had lodged the police complaint. The said complaint came to be registered in Crime No.2466 of 2021 against the petitione/accused for the offences punishable under Section 384 IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

3. When the matter is taken up for hearing, learned counsel appearing for the petitioner has submitted that the parties had entered into a joint compromise and they had amicably settled the issue and thereby seeks to quash the FIR by allowing the Criminal Original Petition. He has also produced the Joint Compromise Memo duly signed the petitioner and the de facto complainant and their respective counsel.

4. Learned counsel appearing for the complainant/second respondent also submitted that the parties had entered into a compromise and settled the issues amicably. He would also submit that the motorcycle has been returned by the petitioner/accused and the de facto complainant had also settled the entire loan amount and thereby, the second respondent/complainant has no objection for allowing the Criminal Original Petition and quash the FIR.

5. The Joint Compromise Memo filed by the parties reads as under:-

"The Petitioner/Accused-Antipas Moses Samuel @ Andiboss (Adhaar No.8902 5999 9547) and the 2nd Respondent/Defacto Complainant-Mrs.K.Vasanthi, (Adhaar No.3449 9886 5375) jointly begs to submit that they know each other for more than 7 years and due to which the petitioner had gave hand loan of Rs.1,00,000/- (Rupees One Lakh Only) to the 2nd Respondent/Defacto Complainant for her Son's education purpose on 05/08/2019 and after two years the 2nd Respondent/Defacto Complainant failed to repay the loan amount and instead handed over her Son's Hero Honda Motor Bike (Reg No.TN 05 BX 9129) subsequently on next few days the due to some misguidance on 22/06/2021 the 2nd Respondent/Defacto complainant had lodged a Complaint before the 1st Respondent Police and obtained CSR Vide CSR No.1010/2021 and following that the 2nd Respondent had approached the Hon'ble X Metropolitan Magistrate, Egmore at Chennai for registering



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FIR based on the complaint given by the 2nd Respondent dated 22/06/2021 and the Hon'ble X Metropolitan Magistrate, Egmore at Chennai had ordered to register FIR vide CrI.M.P.No.17135/2021 and based on the Hon'ble X Metropolitan Magistrate Court's order the 1st Respondent had registered the FIR against the petitioner herein on 07.06.2021 for the offences U/S 384 of Indian Penal Code, 1860 & Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In the meantime the Petitioner had returned the Hero Honda Motor Bike (Reg No.TN 05 BX 9129) to the 2nd Respondent/Defacto Complainant and also the 2nd Respondent/Defacto Complainant had repaid the entire loan amount to the Petitioner/Accused without any arrears or default thus considering the future life and prosperity of the both the parties they decided to put an end to the above said FIR by amicably settling the dispute between them and as this joint compromise memo is being signed and filed accordingly.

The petitioner and the 2nd respondent would jointly pray that this Hon'ble Court may be pleased to record this compromise memo and taking into the consideration this Hon'ble Court may be pleased to quash the FIR in Cr.No.2466/2021 on the file of the 1st Respondent Police, P-6, Kodungaiyur Police Station, Chennai and thus render justice."

6. Heard the learned counsel appearing for the petitioners and the complainant and they were identified by the respective counsel.

7. The case has been registered for offences under Section 384 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. It is 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.

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 summarized 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."



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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



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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 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



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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. Subsequently, 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



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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



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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. In State of Madhya Pradesh vs. Dhruv Gurjar and another ((2019) 5 SCC 570), the Hon'ble Supreme Court, while summarizing the principles regarding quashment of non-compoundable offences, has held that the key issues to be considered are whether the offence in question was more in the nature of crime against a Society or more a personal wrong.

13. Keeping the above principles in mind, this court has to now see as to whether the instant case is a fit case to quash the criminal proceedings based on the settlement arrived at between the parties.

14. Now coming to the facts of this case, the second respondent has alleged that she has had borrowed an amount of Rs.1,00,000/- from the accused for her son's education and she had paid a sum of Rs.7000/- per month towards interest and thereby, she had already paid a sum of Rs.1,10,000/-, however, the petitioner/accused had demanded more money and in lieu of non payment, he had taken the motorcycle of her son.

15. Based on the complaint given by the petitioner, the case has been registered by the respondent for offence under Section 384 IPC and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Now, the parties have arrived at an amicable settlement and they have filed a joint compromise memo wherein it is stated that the petitioner/accused had returned the motorcycle and the second respondent/complainant had also repaid the entire loan amount. The dispute between the parties appears to be private in nature and no public interest is involved. The parties have entered into a compromise. When enquired, the parties have also submitted that they had entered into compromise on their own volition without any coercion from any quarters. No purpose would be served by keeping the proceedings pending. This case is pending at the FIR stage. Hence, the petition is liable to be quashed. The petitioner shall pay an amount of Rs.5,000/- to the credit of Tamil Nadu Advocate Clerks Association and to produce the receipt for the same within a period of two weeks from the date of receipt of a copy of this order.



16. In the result, the Criminal Original Petition is allowed by quashing the FIR in Crime No.2466/2021 dated 07.09.2021 pending on the file of the first respondent. The Joint compromise memo shall form part of the records. Consequently, connected miscellaneous petition is closed.

17. List on 15.03.2022, under the caption for 'reporting compliance'.

Sd/-
Assistant Registrar(Digit)

//True Copy//

Sub Assistant Registrar

rgm/mrm/ssk.

To

1.The State Rep by Inspector of Police,
P-6, Kodungaiyur Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

3.The Section Officer/Posting clerk
High Court of Madras.

+1cc to M/s.S.Pavithra, Advocate SR.No.14289(03/03/2022)

Crl.O.P.No.3181 of 2022 and
Crl.M.P.No.1440 of 2022

SPD(CO)
CB(02/03/2022)