



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.4724 of 2022

Vijayakar Packiaraj,
S/o.Swamidoss

...Petitioner

Vs

1.The State Represented by,
The Inspector of Police,
G-3 Kilpauk Police Station,
Chennai - 600 010.

2.George Abraham ...Respondents/Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleased to call for the records in Crime No.384 of 2013 on the file of the Inspector of Police, G3-Kilpauk Police Station, Kilpauk, Chennai - 600 010, the first respondent herein, and quash the same.

For Petitioner : Mr.C.Prasanna Venkatesh

For Respondents
For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R2 : Mr.s.Purushothaman

ORDER

This Criminal Original Petition has been filed, to call for the records in Crime No.384 of 2013 on the file of the Inspector of Police, G3-Kilpauk Police Station, Kilpauk, Chennai - 600 010, the first respondent herein, and quash the same.

2. The case of the prosecution is that both the petitioner and the second respondent/defacto complainant were residents of Sapthamalika Apartmet Complex in which the second respondent/defacto complainant was also the Secretary of the Association. Due to family dispute, the petitioner was under extreme stress. At that point of time, the petitioner got into a wordy quarrel with the office bearers of the Association regarding issuance of a notice which was refused by the second



respondent/defacto complainant. During the quarrel, the petitioner had used his licensed gun by firing it towards the roof to threaten the second respondent/defacto complainant. Based on the complaint, a case in Crime No.384 of 2013 was registered by the first respondent against the petitioner for the offences under Sections 448, 427, 294(b), 307 and 506(ii) of IPC read with Section 25 (1B) (b) of the Indian Arms Act, 1959.

3. The case is still at the stage of investigation. By passage of time, the parties have due to the intervention of neighbours and well-wishers decided to bury their hatchet and compromise the dispute amicably among themselves.

4. A Joint Compromise Memo has been filed before this Court, which has been signed by the petitioner and the second respondent/defacto complainant. The petitioner and the second respondent/defacto complainant are present before this Court and they were identified by the Inspector of Police, G-3 Kilpauk Police Station, Chennai - 600 010. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves. The Joint Compromise Memo filed by the petitioner and the second respondent is extracted below:-

"2. We jointly state that the events giving rise to the filing of complaint and the withdrawal thereafter are as follows:

3. That in the year 2013, the petitioner was a resident of Sapthamalika Apartments in which apartment, the second respondent was the Secretary of the Association of the said apartments.

4. During the said period the petitioner was under extreme stress on account of harassment he had been facing from his then wife. At that point of time in a stressed and deluded state of mind the petitioner got into a wordy quarrel at the association office regarding issuance of a letter which was refused by the second respondent. Owing to mental state of the petitioner he got agitated and in a fit of anger mood disorder the situation got escalated and the petitioner used his licensed gun to fire at the roof to threaten the second respondent and at that point of time the petitioner could not be calmed by anyone present and he went and shut himself in his room and everyone feared that he might cause harm to himself due to mental



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conditions. Even in this condition the petitioner did not use the arms at anyone nor did he injure anyone with the fire arms.

5. Under these circumstances, the police was called and the petitioner was arrested and a case under Sections 448, 427, 294(b), 307, and 506(ii) of IPC read with Section 25(1B) (b) of the Indian Arms Act, 1959. The petitioner was arrested and remanded to judicial custody. The learned XIV Metropolitan Magistrate had directed examination of the petitioner herein and the petitioner was referred to the Institute of Mental Health, Kilpauk wherein the petitioner was diagnosed with Bipolar Mood Disorder current episode mania with psychotic features and his examination showed patient had increased motor activity, excessive talk, delusion of grandiosity and irritable mood with past H/O treatment for mood disorder.

6. It is submitted the petitioner was in judicial custody being treated for 12 days and after getting the certificate from the medical officer, the petitioner was granted bail. This second respondent on enquiry came to know the matrimonial issues and the mental problems faced by the petitioner and having come to the conclusion that the petitioner was not himself on that day of occurrence i.e., on 22.05.2013, the second respondent decided to withdraw the complaint given by him to the first respondent and in continuation wrote a letter in a stamp paper and handed over the same to the first respondent as early as 18.06.2013 with a copy to the petitioner.

7. The petitioner was mentally not alright at the time of the occurrence and he was not aware of his actions or any consequence thereof at that point of time and he was brought down to normalcy only after treatment and medication at the institute of mental health at the instance of the Court.

8. The petitioner in the year 2016 got divorce and his mental condition and depressive nature caused by the matrimonial trauma became much better and the petitioner was as per courts order having periodical check-ups and was



kindness the parties herein shall be ever obliged."

5. The learned counsel for the petitioner would submit that though the case has been registered for the offences under Sections 448, 427, 294(b), 307 and 506(ii) of IPC read with Section 25 (1B) (b) of the Indian Arms Act, 1959, nobody is injured in this case and that the alleged weapon is also a licensed weapon which belongs to the petitioner. Though the case was registered during the year 2013 and the parties have also compromised the matter even during the relevant period itself that is reason the the final report has not been filed so far. He would submit that the petitioner has no other case against him and he has no antecedents.

6. The learned counsel for the petitioner would further submit that the licensed arm was seized by the first respondent and it is now in custody of the concerned Jurisdictional Magistrate Court. He would further submit that the petitioner does not intend to use the licensed arm any more. However, he would pray that permission may be given to the petitioner to sell his licensed arm to the licensed armory.

7. The learned Additional Public Prosecutor would submit that based on the complaint given by the second respondent/defacto complainant, a case in Crime No.384 of 2013 was registered by the first respondent on 22.05.2013 for the offences punishable under Sections 448, 427, 294(b), 307 and 506 (ii) of IPC read with Section 25 (1B) (b) of the Indian Arms Act, 1959. He would further submit that though nobody is injured in this case as per the complaint given by the second respondent/defacto complainant, the petitioner is stated to have threatened him with the licensed fire arm, however, he would submit that the fire arm used by the petitioner is a licensed one.

8. The learned counsel appearing on behalf of the second respondent/defacto complainant would submit that the petitioner as well as the defacto complainant were residents of the same apartments during the relevant period. He would further submit that the petitioner had not injured any one with the licensed fire arm. He would further that the matter has been compromised as early as on 2013 and the parties are also not interested in proceeding any further in this case.

9. This Court enquired the petitioner and the second respondent/defacto complainant.

10. The parties have also filed Joint Compromise Memo, wherein they have stated that the second respondent has



willingly consented to the nullification of the criminal proceedings, even though offence are non-compoundable.

11. 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."

12. 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:



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- (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."

13. 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.

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(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 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

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(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."

14. Subsequently, a three judges bench of the Hon'ble Apex Court in State of Madhya Pradesh v. Laxmi Narayan reported in (2019) 5 SCC 688 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



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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/delicate 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."

15. Keeping the above principles in mind, let us now consider the instant case as to whether it is a fit case to quash the criminal proceedings based on the settlement arrived at between the parties.

16. In the case at hand, the petitioner is charged for the offences punishable under Sections under Sections 448, 427, 294 (b), 307 and 506(ii) of IPC read with Section 25 (1B) (b) of the Indian Arms Act, 1959. Now, the petitioner and the second respondent/defacto complainant have amicably settled their disputes between themselves. The second respondent/defacto complainant has also filed an affidavit stating that due to



family dispute the petitioner was under extreme stress and was in a deluded state of mind the petitioner used his licensed gun to fire at the roof. Even in such condition the petitioner did not use the arms at anyone nor did he injure anyone with the fire arms.

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17. In view of the compromise between the parties, the possibility of conviction is also remote and bleak. In the above circumstances, the continuity of the criminal proceedings would only cause oppression and prejudice to the parties, hence, in order to secure the ends of justice, this Court is inclined to quash the proceedings as against the petitioner.

18. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner Crime No.384 of 2013 on the file of the Inspector of Police, G-3 Kilpauk Police Station, Chennai is quashed and Joint Memo of Compromise signed by both the parties and the Affidavit of the second respondent/defacto complainant dated 11.03.2022, shall form part of Court records.

19. The licensed fire arm seized in the case shall be returned to the petitioner on him giving an undertaking that he does not intend to use it any more and that it would be sold to a licensed armory. The compliance of the undertaking shall be monitored by the first respondent.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rgm/arb

To

1.The Inspector of Police,
G-3 Kilpauk Police Station,
Chennai - 600 010.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prasanna Venkatesh, Advocate, S.R.No.21451

Cr1.O.P.No.4724 of 2022

RK(CO)
RN(13/04/2022)