



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.4287 of 2022

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1.M.Veerappan,
S/o.Mani

2.M.Prabhakaran,
S/o.Mani

... Petitioners

Vs

1.The State represented by,
The Inspector of Police,
Polur Police Station,
Tiruvannamalai District.

2.Arumugam,
S/o.Arunachalam

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., pleased to call for the entire records connected with the Crime No.266 of 2018 pending investigation on the file of the first respondent police and quash the same.

For Petitioners: Mr.E.Sathiyaraj

For Respondents:

For R1 : Mr.A.Gokulakrishnan

Additional Public Prosecutor

ORDER

The petition has been filed seeking to quash the FIR in Crime No.266 of 2018 pending investigation on the file of the first respondent police for the offences punishable under Sections 366(A), 376 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offence Act (POCSO), 2012. The FIR in Crime No.266 of 2018 was registered based on the complaint given by the second respondent/defacto complainant, that his minor daughter was found missing.

2. The learned counsel for the petitioner would submit that based on the complaint given by the second respondent/defacto complainant, the first respondent had registered a case in Crime No.266 of 2018 under the caption "Girl Missing". During the course of investigation, it was found that the first petitioner had kidnapped the minor girl and had committed a sexual assault on the victim/minor girl. The second petitioner who is the



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"1. It is submitted that the case of the prosecution is that the 2nd respondent's namely Mahalakshmi, who was studying 10th standard in Government Higher Secondary School, Chengunam. Further, the 2nd respondent's daughter was writing 10th standard Public Examination in Ramajeyam Matriculation School, Polur. On 28.03.2018, the 2nd respondent's son namely Naveen dropped the said Mahalakshmi at Polur for her public exam and again when he went to Examination Centre to pick up her at about 12.30, however her daughter was found missing. Therefore, the 2nd respondent's son enquired with Exam Hall supervisor and they informed that the girl had not attended the exam on that day. Therefore, the 2nd respondent searched and enquired where about of her daughter in his relatives and friends house of her daughter. But there is no information about her. Therefore, he lodged a complaint dated 29.03.2018 to the 1st respondent police and the 1st respondent registered a F.I.R in Crime No.226/2018 under girl missing. Later, offence altered as under Sections 366(A), 376 of Indian Penal Code r/w Sections 4 and 6 of Protection of Children from Sexual Offence Act 2012 in Crime No.266 of 2018.

2. It is submitted that thereafter the 2nd respondent came to know that the 1st petitioner and the said Mahalakshmi were loved each other. Therefore, they were eloped and got married and lived as husband and wife. Subsequently, they were secured by the 1st respondent police on 19.08.2018. And the 1st petitioner was arrested and remanded into the Judicial Custody on 19.08.2018 and thereafter released on bail by order dated 20.09.2018. It is pertinent to note here that after coming out from the judicial custody, there was compromise arrived between both family members and they accepted their marriage. Thereafter, the 1st petitioner and the said Mahalakshmi started their matrimonial life at Door No.312/406, Amman Kovil Street, Chengunram, Tiruvannamalai District.

3. It is submitted that subsequently on 26.06.2020 the said Mahalakshmi gave a birth to a Male child namely V.Matheesh at Government Women and Children Hospital, Egmore. Both family members have accepted their marriage, therefore



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the 2nd respondent also agreed to quash and withdraw the above said proceeding against the petitioners.

4. It is submitted that in view of the compromise arrived between the petitioners and the 2nd respondent, the 2nd respondent has not inclined to continue the proceeding in FIR in Crime No.266 of 2018 on the file of the 1st respondent police which is pending as against the petitioners. Therefore, the 2nd respondent thereby undertake that he will not pursue the above said FIR in Crime No.266 of 2018 on the file of the 1st respondent police as against the petitioner's/accused may be quashed in all respects."

8. The learned Additional Public Prosecutor for the first respondent would submit that based on the complaint given by the second respondent/defacto complainant, a case in Crime No.266 of 2018 was registered under the caption for 'girl missing'. Later, it came to light that the first petitioner along with his brother/second petitioner had kidnapped the victim girl and thereafter the first petitioner had sexually penetrated the victim/minor girl. Thereby, the case was altered to 366(A), 376 of IPC and Sections 4 and 6 of the Protection of Children from Sexual Offence Act (POCSO), 2012. However, he would submit that the investigation is still pending.

9. He would further submit that it has also brought to the knowledge of the first respondent police that due to the intervention of parents from either side, the marriage between the first petitioner and the victim girl/second respondent's daughter has been solemnized and has also been registered. He would further submit that the second respondent/defacto complainant and the victim girl are also present before this Court.

10. This court enquired both of them. The second respondent/defacto complainant submitted that he and the petitioners belong to the same community and he would further submit that his daughter had eloped with the first petitioner. Subsequently, due to the intervention of the elders in the village, a marriage has been performed after the victim attained majority.

11. The victim girl is also present before this Court. She would submit that there was a love affair between herself and



the first petitioner and without understanding the consequences she had eloped with the first petitioner and she would further submit that after attaining majority, a marriage has been performed due to intervention of elders in both families.

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12. 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 offences are non-compoundable.

13. 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."

14. 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



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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."

15. 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.



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(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.

(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



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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

(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."

16. 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



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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/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."

17. 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.

18. In the case at hand, the petitioner is charged for the offences punishable under Sections 366(A), 376 of IPC and



Sections 4 & 6 of the Protection of Children from Sexual Offence Act (POCSO), 2012. Now, the petitioners 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 the intervention of villagers and family members the matter has been settled between the parties.

19. 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 frustration to the parties, hence, in order to secure the ends of justice, this Court is inclined to quash the proceedings as against the petitioner.

20. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner Crime No.266 of 2018 on the file of the Inspector of Police, Polur Police Station, Tiruvannamalai District is quashed and Joint Memo of Compromise signed by both the parties shall form part of Court records.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1.The Inspector of Police,
Polur Police Station,
Tiruvannamalai District.

2.The Public Prosecutor,
High Court of Madras.

+1 cc to Mr.E.Sathiyaraj, Advocate Sr.NO. 28107

Cr1.O.P.No.4287 of 2022

SMI (CO)
A.SK(23/05/2022)