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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.6382 OF 2022

Chinnadurai

... Petitioner/
Accused

Vs

1. State Rep by its
Inspector of Police,
Paramathi Police Station,
Namakkal district.

2. Ms. Sumathy

... Respondents/
Complainant & Defacto Complainant

PRAYER:

This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pending on the file of the Fast Track Mahila Court, Namakkal pertaining to Spl.C.C.No.2 of 2022 and to quash the same.

For Petitioner : M/s.G.Selvi George

For Respondents: A.Gokulakrishnan
Additional Public Prosecutor for R1

ORDER

This Criminal Original Petition has been filed to call for the records pending on the file of the Fast Track Mahila Court, Namakkal pertaining to Spl.C.C.No.2 of 2022 and to quash the same.

2. Learned counsel for the petitioner would submit that the petitioner and the victim girl are close relatives. The victim girl is none other than the daughter of the maternal uncle of the petitioner. Both of them loved each other and the victim girl was born on 04.11.2003. The parents of the petitioner as



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well as the victim girl, finding that the petitioner and the victim girl are moving close to each other, performed the marriage of the petitioner and the victim girl as per the traditions and customs and she was born on 04.11.2003 and their marriage was performed on 19.11.2020. The petitioner, the parents of the petitioner and the parents of the victim girl, without understanding the rigors and the consequences of the Prohibition of Child Marriage Act, 2006 and Prohibition of Children from Sexual Offences Act 2012, conducted the marriage on 19.11.2020 assuming that the victim had attained majority and subsequently, the petitioner and the victim girl are living as husband and wife and the victim girl has also delivered a girl child on 04.11.2022. Meanwhile, based on the complaint given by the de-facto complainant/Women Rural Welfare Officer, a case was registered by the first respondent Police against the petitioner for the offence under Section 9 of the Prohibition of Child Marriage Act 2006. Later, the petitioner was arrested and the final report was filed for the offences under Section 9 of the Prohibition of Child Marriage Act, 2006, Section 366 IPC and Section 6 r/w Section 5(1), 5(j)(ii) and 5(n) of POCSO Act, 2012. Subsequently, after the victim attained majority, a legal marriage was performed on 13.03.2022 and the same was registered before the SRO, Namagiripettai, vide HMC.No.86 of 2022 on 07.04.2022. He would further submit that the marriage was performed jointly by both families and the victim girl who was in love with the petitioner, has also consented for the marriage. He would further submit that neither the victim girl, nor the parents of the victim girl, want to pursue with the case. Continuation of the further proceedings only causes oppression, frustration and prejudice to the parties and no purpose will be served by allowing the trial to continue, since the victim and the family members will not support the case of the prosecution.

3.Learned Additional Public Prosecutor appearing for the first respondent would submit that based on the complaint given by one Sumathy, Women Rural Welfare Officer, Paramathy, Namakkal District that the accused had performed a child marriage of minor victim, the first respondent Police had registered a case for the offence under Section 9 of the Prohibition of Child Marriage Act 2006. Thereafter, after completion of investigation, the final report has been filed for the offences under Section 9 of the Prohibition of Child Marriage Act 2006, Section 366 IPC and Sections 6 r/w 5(1), 5(j)(ii) and 5(n) of POCSO Act 2012. He would further submit that the investigation reveals that the petitioner and the victim girl are close relatives and they were in love with each other. The parents of the petitioner and the victim girl, finding that they were moving closely, had performed the marriage as per their customs and traditions. He would further submit that the victim had also



delivered a child and the case is now pending before the Fast Track Mahila Court, Namakkal in Spl.C.C.No.2 of 2022.

4.A Joint Memo of Compromise has been filed before this Court, which have been signed by the petitioner and the victim girl and the parents of the petitioner and the victim girl have also filed their respective joint affidavit before this Court and the parties were identified by their respective counsel. The petitioner, the second respondent/defacto complainant, victim girl and both of their parents were also present in person before this Court and they were identified by the respondent Police. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves.

5.The Victim girl has also filed an affidavit and the relevant portion of the affidavit of the victim girl dated 30.03.2022 is extracted hereunder : -

"1.I am the deponent herein and PW2 in Crime No.447 of 2021 and as such am well acquainted with the fact of the case. The petitioner herein is my husband and he has filed the above Criminal Original Petition seeking to call for the records relating to Spl.C.C.No.2 of 2022 in Cr.No.447 of 2021 pending on the file of Fast Track Mahila Court, Namakkal and quash the same. I crave leave of this Court to treat the grounds of petition as part and parcel of this affidavit of mine.

2.I respectfully state that the Woman Rural Welfare Officer, Union Officer, Paramathi along with the Samuga Virivakka Officer, Union Office, Paramathi gave the complaint to the respondent Police the respondent Police registered a charge sheet in Spl.C.No.2 of 2022 in Crime No.447/2021 under Section 366 IPC, Section 6, 5(1), 5(j)(ii)5(n) of POCSO Act and Section 9 of Prohibition of Child Marriage Act 2006 against this charge sheet the petitioner had filed the above Crl.O.P to quash.

3.I state myself and the petitioner are living happily as husband and wife and that we are also blessed with a girl child born on 04.01.2022 and we named her as Joshna Sri. I state that the petitioner and myself got married on 13.03.2022 as per Hindu rites & customs and our marriage was our marriage was registered with the Marriage Registrar, Namagiripettai on 07.04.2022 in HMC No.86 of 2022. I state that we are living happily. The petitioner is innocent and has not committed any offence much less an offence alleged in the charge sheet. Hence the above Spl.C.C.2 of 2022



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is not quashed, the entire family including the small baby will be put to tremendous hardship and prejudice. Hence both the parties have filed the joint compromise memo to quash the further proceedings of Spl.C.C.2 of 2022 in Crime No.447 of 2021 on the file of the Fast Track Mahila Court, Namakkal."

6.The case has been registered for offences under Section 366 of IPC, Section 6, 5(1), 5(j)(ii), 5(n) of POCSO Act and Section 9 of Prohibition of Child Marriage Act 2006. 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.

7.Heard the counsels and perused the entire materials available on record.

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.

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 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



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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

(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, 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



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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 herein above;

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."

12. 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.

13. In the case at hand, the petitioner is charged for the offences punishable under Section 366 of IPC and Section 6 r/w. 5(1) 5(j)(ii), 5(n) of Protection of Child from Sexual Offences Act 2012 and Section 9 of Prohibition of Child Marriage Act 2006. The petitioner and the victim girl are close relatives. The parents being rustic villagers have performed the marriage



without understanding the rigours of law. All the family members are present before this Court. Now, the petitioner and the victim girl have amicably settled their disputes among themselves. The Victim girl has also filed an affidavit stating that she got married with the petitioner on 13.03.2022 and they are leading their matrimonial life as husband and wife. Out of the wedlock she has given birth to a girl child on 04.01.2022. She has also stated no objection for quashing the proceedings pending on the file of the Fast Track Mahila Court, Namakkal in Spl.CC.No.2 of 2022.

14. 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, frustration 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.

15. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioners in Spl.CC.No.2 of 2022, on the file of the Fast Track Mahila Court, Namakkal, is quashed and Joint affidavit of both parties and the affidavit of the victim girl dated 13.04.2022, shall form part of Court records.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vkr/nti

To

1. The Judge, Fast Track Mahila Court, Namakkal.
2. The Inspector of Police,
Paramathi Police Station,
Namakkal district.
3. The Public Prosecutor,
High Court of Madras.

+lcc to M/s.G.Selvi George, Advocate, S.R.No.26003

Cr1.O.P.No.6382 of 2022

AJS(CO)
PM/13/05/2022