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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.8226 of 2022

and

Crl.M.P.No.4794 of 2022

Pavithran

...Petitioner / Accused No.4

-Vs-

1. The State represented by,
The Inspector of Police,
Wallajapettai Police Station,
Ranipettai.

...1st Respondent / Complainant

2.Sarath Kumar

...2nd Respondent / Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records pursuant to the FIR No.611 of 2020 dated 19.05.2020, on the files of the 1st respondent and quash the same in so far as the petitioner concerned.

For Petitioner : Mr.J.Arokhiaaraj

For Respondents : Mr.A.Gokulakrishnan

Additional Public Prosecutor for R1

O R D E R

The Criminal Original Petition has been filed to call for the records pursuant to the FIR No.611 of 2020 dated 19.05.2020, on the files of the 1st respondent and quash the same in so far as the petitioner concerned.

2. The case of the prosecution as per defacto complainant is that on 19.05.2020 at about 3.30 a.m., the defacto complainant along with his friend one Dinesh had gone in their motor cycle to Vanivedu, pallaru River. At that time, the accused persons had waylaid them and assaulted them and also attempted to set fire on them and lighted fire on the motor cycle of the defacto complainant and his friend. Hence this complaint.



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3. The learned counsel for the petitioner would submit that the petitioner is innocent and his name has been given on the mistaken identity. The petitioner was not at the scene of occurrence and the petitioner had not committed any offences as alleged in the complaint. Later, the defacto complainant coming to know that the petitioner is not involved in the offence, has compromised the issue with the petitioner. He has also filed an affidavit before this Court, consenting for quashing the FIR as against the petitioner. The learned counsel further submitted that the petitioner is doing Doctorate in Physical Education and he has got good academic records. He has been unnecessarily dragged into the present case.

4. The learned Additional Public Prosecutor would submit that based on the complaint given by the defacto complainant, a case in FIR No.611 of 2020, has been registered for the offences under Sections 147, 294(b), 341, 323, 384, 506(2) of I.P.C., and Section 4 of PDPPA. He would submit that the investigation is pending.

5. The learned counsel for the second respondent/defacto complainant would submit that it is a case of mistaken identity and the petitioner has been wrongly identified and his name has been wrongly given by the defacto complainant.

6. The defacto complainant is present before this Court. This Court enquired him and he would submit that the petitioner is not the person who involved in the alleged occurrence. Due to mistaken identity, the name of the petitioner has been wrongly given in the complaint. He would also submit that he does not want to proceed further with the complaint given by him as against the petitioner.

7. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent and the learned counsel for the second respondent.

8. The case is under investigation. By passage of time, the parties have decided to bury their hatchet and compromise the dispute amicably among themselves.

9. A joint compromise memo dated 26.04.2022, has been filed by the petitioner and the second respondent before this Court and signed by the parties. The petitioner and the 2nd respondent/defacto complainant are present before this Court and they were identified by their respective counsel. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves. The relevant portions of the Joint Compromise memo dated 26.04.2022,



filed by the petitioner and the 2nd respondent/defacto complainant is extracted hereunder:-

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2. It is submitted that initially the complaint was filed on suspiciousness on the petitioner who was in the quarrel standing next to the alleged 1,2,4 and 5 accused, but later it was found and understood that he is not to part with the alleged offence and the 2nd respondent does not further need to proceed with the case against the petitioner/accused -3 and on the courtesy being the petitioner is a qualified M.Phil in Physical Education and also cleared the National Eligibility Test (NET) who is seeking the Government Job, the second respondent is ready for compromise to settle the issue.

3. Hence the defacto complainant is willing to withdraw the case and he doesn't want to pursue the case against the petitioner.

4. It is submitted that the parties have entered into a compromise and thereby settled the issue amicably among themselves out of a free will and without any coercion with an intention to settle peacefully. Hence, the petitioner prays this Court to quash the impugned FIR so far as the petitioner is concerned and if this petition is allowed, no prejudice would be caused to anyone.

5. It is submitted that the continuation of the criminal proceedings will cause mental agony and a great injustice to the petitioner including the defacto complainant and if this petition is allowed, no prejudice would be caused to anyone."

10. 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



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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."

11. 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.



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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."

12. 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



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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

(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."

13. 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;



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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 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 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."

14. 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.

15. Taking into consideration the facts and circumstances of the case that the petitioner has been implicated on mistaken identity and also taking into consideration the compromise arrived between the parties, this Court is of the opinion that 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.

16. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated in FIR No.611 of 2020, against the petitioner alone, on the file of the respondent police is quashed and the joint compromise memo dated 26.04.2022 shall form part of Court records. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Inspector of Police,
Wallajapettai Police Station,
Ranipettai.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Arokhiaraj, Advocate, S.R.No.29609

Crl.O.P.No.8226 of 2022 and
Crl.M.P.No.4794 of 2022

AJS[co]
NSK/30/05/2022