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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.7952 of 2022

and

Crl.M.P.No.4605 of 2022

Anbu Alias Anbalagan

...Petitioner/Single Accused

-Vs-

1.The State,

rep by The Inspector of Police,
Central Crime Branch,
EDF-II, Team XXXVII,
Chennai.

... Respondent/Complainant

2.M/s.Malai Murasu News Channel,

Rep by its Chief New Editor,
Mr.M.Ganesan,
Office at M/s.Malai Murasu TV PVT Ltd,
No.246, Anna Salai,
Thousand Lights,
Chennai - 600 096.

... Respondents/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records relating to FIR.No.194/2021 on the file of the Inspector of Police, Central Crime Branch, EDF-II Team XXXVII, Chennai pending disposal of the above Criminal Original Petition.

For Petitioner : Mr.K.Samidurai

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1.
M/s.V.Ananthi for
Mr.K.Mohanamurali for R2

O R D E R

This Criminal Original Petition has been filed to call for the records relating to FIR.No.194/2021 on the file of the Inspector of Police, Central Crime Branch, EDF-II Team XXXVII, Chennai pending disposal of the above Criminal Original Petition.



2. The case of the prosecution as per the defacto complainant who is the Chief News Editor and in charge of marketing division of Malai Murasu News Channel is that during audit, it was found that the accused who was running Vikas Advertisement, Visaka Media, Vikas agency which was collecting advertisement on behalf of the defacto complainant had committed criminal breach of trust and cheating the defacto complainant had misappropriated amount to the tune of Rs.1,87,40,134/-. Earlier, the defacto complainant had instructed the accused to pay the amount and he had threatened the defacto complainant, thereafter the defacto complainant had preferred a complaint before the Commissioner of Police, Madurai on 05.12.2020. At that time, the accused had confessed to the crime and had offered to return a sum of Rupees One Crore towards first installment within three months and thereafter to pay the balance amount. Since, he did not pay the amount, the defacto complainant had given a complaint, based on which a case has been registered by the CCB in Cr.No.194 of 2021 under Section 420, 506(i) of IPC. During the course of investigation, finding that the petitioner accused was the agent of the complainant the case was altered to one under Sections 409 and 420 of IPC and the case is pending investigation.

3. The learned counsel for the petitioner would submit that the petitioner was running an advertisement agency and he was collecting advertisement and giving it to the defacto complainant for telecasting in the TV channel. During Covid period the petitioner was unable to collect money from customers and he was unable to remit the amounts. Meanwhile, the defacto complainant had given a complaint against the petitioner, based on which the petitioner was arrested and after the registration of the case, a compromise has been entered into between the petitioner's wife and the management of the defacto complainant/company. Thereafter, the accounts were reconciled and the petitioner had offered to repay a sum of Rs.55,00,000/- as full and final settlement. The respondent/defacto complainant has also accepted the above amount as full and final settlement, the entire amount was also been paid. Earlier while the petitioner was in custody a Memorandum of Understanding was entered into between the defacto complainant and the wife of the petitioner on 07.02.2022 and after the petitioner had come out on bail and the Memorandum of Understanding has also been ratified by him.

4. He would further submit that it is only a case of business transactions. Now, the parties have arrived at compromise. Though, the offences alleged are not compoundable in nature, the dispute between the parties are private in nature and no public interest is involved and thereby he would seek to quash the proceedings based on the compromise entered into between the parties.



5. The learned Additional Public Prosecutor would submit that based on the complaint given by the defacto complainant case was registered for the offence under Sections 420 & 506(i) IPC and later finding that the petitioner was agent under the defacto complainant, the case was altered to one under Section 409 and 420 of IPC. Further, he would submit that the parties have compromised between themselves and the dispute is private in nature.

6. M/s.V.Ananthi for Mr.K.Mohanamurali appearing for the 2nd respondent/defacto complainant would submit that the dispute between the parties are private in nature. Pursuant to which the accused has also paid a sum of Rs.55,00,000/- (Rupees Fifty Five Lakhs) towards full and final settlement. The 2nd respondent/defacto complainant also accepted the same. She would further submit that the 2nd respondent/defacto complainant has no objection in the proceeding being quashed in entirety.

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

8. A Memorandum of Understanding has been filed before this Court, which have been signed by the petitioner and the 2nd respondent/defacto complainant. The parties were 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 portion of the Deed of Memorandum of Understanding dated 07.02.2022 is extracted hereunder :-

'1.Both the parties agreed for a sum of Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) as full and final settlement without any further claims.

2. The Party of the Second Part on this day has paid a sum of Rs.25,00,000/- to the Party of the First Part as follows :-

(i)Rs.2,50,000/- by cash

(ii)Rs.9,00,000/- by Demand Draft No.920388, dated 07.02.2022, Drawn on Karur Vysya Bank, Ashok Nagar Branch, Chennai, in favour of "MALAI MURASU TV PVT LTD" the PARTY OF FIRST PART herein

(iii)Rs.4,50,000/- by Demand Draft No.9203899, dated 07.02.2022, Drawn on Karur Vysya Bank, Ashok Nagar Branch, Chennai, in favour of "MALAI MURASU TV PVT LTD" the PARTY OF FIRST PART herein

(iv)Rs.4,50,000/- by Demand Draft No.920384, dated 07.02.2022, Drawn on Karur Vysya Bank, Ashok Nagar Branch, Chennai, in favour of "MALAI MURASU



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TV PVT LTD" the PARTY OF FIRST PART herein

(v)Rs.4,50,000/- by Demand Draft No.920387, dated 07.02.2022, Drawn on Karur Vysya Bank, Ashok Nagar Branch, Chennai, in favour of "MALAI MURASU TV PVT LTD" the PARTY OF FIRST PART herein

3.The Party of the Second Part hereby handed over the original documents of her Madurai property bearing Doc Nos.825/2003 & 1308/2003 on the file of the Sub Registrar Office, Tallakulam, Madurai North as security for the payment of remaining amount of Rs.30,00,000/- and she assures that she will settle the amount on or before 31.03.2022.

4.The Party of the First Part assure that on receipt of remaining amount of Rs.30,00,000/- they shall return the original property documents along with the letter written on 11.12.2020 on a stamp paper by Anbu @ Anbalagan to the Party of the Second Part.

5.In case of the amount of 30,00,000/- (Rupees thrity Takhs only) is not settled within the time stipulated under this Memorandum of Understanding the party of the Second Part has agreed to and the entire amount of Rs.1,87,40,134/- shall become payable immediately and towards part of the said amount the Party of the Second Part shall execute sale deed in the subject matter of the property Doc.Nos.825/2003 & 1308/2003 on the file of the Sub Registrar Office, Tallakulam, Madurai North in favour of the party of the First Part immediately and the Party of the First Part shall further proceed with the criminal complaint in Crime No.194 of 2021 and also for the balance amount due from the Party of the Second Part.

6.The Party of the First Part has agreed to give no objection for the Bail Petition for release of Anbu @ Anbalagan before the Court, Egmore, Chennai for the present and on full and final settlement shall give no objection for the Quash petition filed by Anbu @ Anbalagan to Quash the FIR in Crime No.194/2021 before the Hon'ble High Court, Chennai.

7.The Party of the First Part assure that they will not claim any further amount from the Party of the Second Part or her husband Anbu @ Anbalagan in respect of their business/transaction with Anbu @ Anbalagan.

8.The Party of the Second Part undertake to get an affidavit from her husband Mr.Anbu @ Anbalagan to ratify this MOU within a week from the date of his release/come out on Bail.

9.If any terms of this MOU is violated the



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parties to this MOU shall resolve the dispute through an Arbitrator and at time the Arbitration and Conciliation Act 1996 as amended upto date shall be made applicable.

10. Both the parties executed this Memorandum of Understanding on this day in a sound state of mind, voluntarily out of their own free will, without any compulsion or pressure from any person."

9. The case has been registered for offences under Section 420 and 506(i) of IPC and thereafter altered one under Section 409 and 420 of IPC. 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.

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 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.

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



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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 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



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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;

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



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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 impart 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. In the case at hand, the petitioner is charged for the offences punishable under Sections 409 and 420 IPC. Now, the petitioner and the 2nd respondent/defacto complainant have amicably settled their disputes between themselves. The joint memorandum of compromise was entered into by the defacto complainant and the wife of the petitioner and thereafter the same has also been ratified by the petitioner. The defacto complainant has stated no objection for quashing the proceedings in FIR in Cr.No.194 of 2021 pending on the file of the first respondent.



16. This Court enquired the 2nd respondent/defacto complainant and the petitioner, both the parties have stated that they have amicably settled the matter between themselves and entered into a joint memorandum of compromise. The second respondent/defacto complainant has also stated no objection to the proceedings being quashed. The second respondent/defacto complainant is not interested in prosecuting the criminal proceedings.

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, 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.

18. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner in FIR.No.194/2021 on the file of the Inspector of Police, Central Crime Branch, EDF-II Team XXXVII, Chennai is quashed and Deed of Memorandum of Understanding signed by both the parties, shall form part of Court records. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

jas/tsh

To

1.The Inspector of Police,
Central Crime Branch,
EDF-II, Team XXXVII, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Samidurai, Advocate, S.R.No.23488

+1cc to Mr.K.Mohanamurali, Advocate, S.R.No.23932

Crl.O.P.No.7952 of 2022 and
Crl.M.P.No.4605 of 2022

NR(CO)
GN(23/05/2022)