

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.8560 of 2022

- 1.A.Nirmala,
W/o.Arul Prakash
- 2.B.Gajalakshmi,
W/o.Babu Singh
- 3.P.Saravanan,
S/o.Parthasarathi
- 4.S.Sasikala,
W/o.Sambath Kumar

... Petitioners

Vs

- 1.The State of Tamil Nadu,
Represented by its Sub-Inspector of Police,
E-5, Sholavaram Police Station,
Chennai-52.
(Crime No.147 of 2021)

- 2.Hemavathi,
W/o.N.Palani

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., pleased to call for the records relating to the proceedings in Crime No.147 of 2021, on the file of the first respondent herein, and to quash the same.

For Petitioners : Mr.P.Raja

For Respondents :

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R2 : Mr.P.Kumaran

ORDER

The petition has been filed, to call for the records relating to the proceedings in Crime No.147 of 2021, on the file of the first respondent herein, and to quash the same.

2. In Crime No.147 of 2021, the crux of the allegation as per the second respondent/defacto complainant is that on 20.02.2021 at about 12.00 PM the accused one Nirmala along with her relatives and some other henchmen nearly about 20 persons had illegally trespassed into the petitioner's house and tried to grab the defacto complainant/second respondent's house illegally. It is further submitted that under the guise of said Nirmala, the accused persons damaged several articles and home appliances and they further abused and threatened the second respondent/defacto complainant and her son to vacate the house. Thereafter, a complaint was given by the second respondent/defacto

complainant via calling 100 and thereafter the first respondent had registered the case against the petitioners for the offences punishable under Sections 147, 448, 294(b), 506(1) of IPC.

3. The learned counsel for the petitioner would submit that based on the complaint given by the second respondent/defacto complainant, a case in Crime No.147 of 2021 was registered against the petitioners for the offences punishable under Sections 147, 448, 294(b), 506(1) of IPC.

4. The learned counsel for the petitioners would further submit that the first petitioner had entered into an agreement with one Mr.N.Palani, husband of the second respondent/defacto complainant for purchasing the property. Pursuant to the said agreement, the first petitioner has made a payment of Rs.15,50,500/- to the said Mr.N.Palani as per the agreement. Thereafter, the second respondent/defacto complainant had refused to vacate the house and had issued a cheque amount of Rs.2,00,000/- as a part payment.

5. The learned counsel for the petitioners would further submit that the cheque given by the said N.Palani was dishonoured and when it was questioned by the petitioners, they were abused and chased away. Subsequently, the second respondent/defacto complainant has lodged a false complaint against the petitioners, as if the petitioners had entered into the house and damaged to the property. He would submit that the matter has been compromised now.

6. The case is still at the stage of investigation. By passage of time, the parties have decided to bury their hatchet and compromised the dispute amicably among themselves.

7. A Memorandum of Compromise has been filed before this Court, which has been signed by the petitioners and the second respondent/defacto complainant and their respective counsels. The petitioners and the second respondent/defacto complainant are present before this Court and they were identified by the Inspector of Police, E-5 Sholavaram Police Station, Chennai - 52. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves. The

Memorandum of Compromise filed by the petitioners and the second respondent is extracted below:-

“1. The first petitioner herein and the first accused in the above Crime No.147 of 2021, on the file of the first respondent, and the second and third petitioners herein, who are the second and fourth accused are cousins of the first petitioner, and the fourth petitioner herein, who is the fifth accused is the sister-in-law of the second petitioner herein, as such, all are related to each other.

2. The case in above Crime No.147 of 2021, on the file of the first respondent, was registered on the complaint, dated 20.02.2021, by the second respondent, who is the defacto complainant, under Sections 147, 448, 294(b) and 506(i) of I.P.C

3. The first petitioner intend to purchase a house in Chennai, for which, entered into an agreement with one, Mr.N.Palani, the husband of the second respondent, for the purchase of the property, bearing Door No.1/891, Nethaji Street, Gandhi Nagar, Red Hills, and pursuant to the said agreement.

4. However said Mr.N.Palani, orally cancelled the sale and he had issued a cheque for Rs.2,00,000/- a part payment towards the return of the sale consideration.

5. When the said cheque was dishonoured by the said N.Palani, there was an argument, and immediately the second respondent had lodged a complaint against petitioners, on 20.02.2021, petitioner also lodged another complaint, as against the said N.Palani and his wife, the second respondent herein, and the said complaint, dated 01.03.2021 has been registered as Crime No.179 of 2021.

In both the complaints, the first respondent summoned both parties, for enquiry and during enquiry, advised both parties to settle the issue, amicably in order to avoid any unpleasant consequences, as the issue involved is civil in nature.

6. Accordingly the petitions and the second respondent have compromised the issue and both the complaints have been amicably settled amongst ourselves and we have no claim against each other.”

8. The learned counsels appearing for both the parties would submit that the parties are relatives and there was a dispute with regard to not vacating the property. Now, the parties have settled the matter amicably among the matter themselves. The Memorandum of Compromise has also been entered into between the parties and both parties do not want to proceed with further as against each other. They have also want to quash the proceedings.

9. This Court enquired the petitioners 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:

- (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.

(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

(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 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

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."

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 147, 448, 294(b), 506(1) of IPC. Now, the petitioners and the second respondent/defacto complainant have amicably settled their disputes between themselves.

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 petitioners in Crime No.147 of 2021 on the file of the Sub-Inspector of Police, E-5 Sholavaram Police Station, Chennai is quashed and Joint Memo of Compromise signed by both the parties shall form part of Court records.

22.04.2022

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking Order

rgm/arb

To

1.The Sub-Inspector of Police,
E-5, Sholavaram Police Station,
Chennai-52.

2.The Public Prosecutor,
High Court of Madras.

A.D.JAGADISH CHANDIRA,J.

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