



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.9123 of 2022

1.G.Shanmuga Sundaram
2.R.Samuel
3.P.Naveen

...Petitioners/Accused

-Vs-

1. The State rep by its,
The Inspector of Police,
J6 Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai - 600 041.

.. 1st Respondent/Complainant

2. M.Ravi

.. 2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records in C.C.No.2799 of 2021 on the file of the XVIII Metropolitan Magistrate, Saidapet at Chennai and quash the same against the petitioners.

For Petitioners: Mr.G.Paul Einstein

For Respondents: Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1.
Mr.P.Senthil Kumar for R2.

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.2799 of 2021 on the file of the XVIII Metropolitan Magistrate, Saidapet at Chennai and quash the same against the petitioners.

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



3. The learned counsel for the petitioner would submit that the petitioner and the second respondent/defacto complainant are residents in the same street and due to domestic quarrel an incident had happened. He would submit that in order to bring amity and to avoid acrimonious litigations the parties have decided to amicably settle the dispute and the parties after deliberations between them had entered into a memorandum of compromise.

4. The learned Additional Public Prosecutor appearing for the first respondent would submit that based on the complaint given by the second respondent/defacto complainant, a case in Crime No.645 of 2021 for the offence under Sections 341, 294(b), 323, 326 and 506(ii) IPC. After completing investigation final report has been filed before the XVIII Metropolitan Magistrate, Egmore, Chennai and the same was taken up in CC.No.2799 of 2021 and now the case is posted on 10.05.2022 for appearance of accused.

5. The learned counsel appearing for the second respondent/defacto complainant would submit that the parties are known to each other and the incident had happened due to domestic quarrel. The second respondent/defacto complainant and the petitioners have filed Joint Memo of Compromise before this Court signed by both the parties and their respective counsel and the second respondent/defacto complainant has also filed an affidavit. 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. An affidavit of the 2nd respondent/defacto complainant is extracted hereunder : -

"1.I submit that I am the 2 Respondent/De-facto complainant herein and as such as I am well acquainted with the facts and circumstances of the above captioned O.P, and I am competent to swear to this Affidavit filed in support of the Joint Memo of Compromise dated 01.04.2022.

2.I submit that a Joint Memo of Compromise has been filed for the purpose quashing the C.C.No.2799 of 2021 in Crime No.645 of 2021, pending on the file of the Learned XVIII M.M, Saidapet at Chennai for the offences U/s. 294(b), 323, 326, 341 and 506 (ii) of IPC, The Petitioners herein are arrayed as Accused persons therein respectively.

3.I further submit that by passage of



WEB COPY

time, on my own interest, in order to put a quietus to the issue, since the Petitioners herein are my neighbours and known to each other for more than a decade, I entered into the Joint Memo of Compromise with the Petitioners above. In fact, the case was given by me due to some misunderstandings arose between me and the Petitioners above, on the pretext of my minor son, now I am intending to settle the issues between us in an amicable manner.

4.I submit that the Petitioners did not pay any money in connection to the present case, and I have not imposed any conditions on each other, in order to arrive for the compromise.

5.I submit that I have entered into the Joint Memo of Compromise with sound state of mind and without any force, threat, undue influence or coercion. I have arrived compromise with the Petitioners above only with mutual intention to put a quietus to the issue peacefully.

6.I submit that I am not willing to proceed with the case against any of the Petitioners herein and all the offences which are mentioned in the case are simple in nature.

7.I submit that I have no objection to quash the C.C. No. 2799 of 2021 in Crime No. 645 of 2021 pending on the file of Learned XVIII M.M, Saidapet at Chennai. Therefore, it is not necessary to proceed with further proceedings as against the petitioners herein."

6. 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



WEB COPY

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."

7. 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



WEB COPY

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."

8. 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



WEB COPY

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."

9. 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,



WEB COPY

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."



WEB COPY

10. 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.

11. In the case at hand, the petitioners are charged for the offences punishable under Sections 341, 294(b), 323, 326 and 506 (ii) of IPC. Now, the petitioners and the 2nd respondent/defacto complainant have amicably settled their disputes between themselves. The 2nd respondent/defacto complainant has also filed an affidavit stating that based on the advice of their close relatives and friends the parties resolved all the issues and decided to settle the issue amicably.

12. This Court enquired the 2nd respondent/defacto complainant he had informed that on 01.07.2021, due to the fight between him and the petitioners, without knowing the consequences, he had filed the complaint against the petitioners. The case is also ripe for trial, the second respondent/defacto complainant is not interested in prosecuting the criminal proceedings.

13. 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.

14. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner in C.C.No.2799 of 2021 on the file of the XVIII Metropolitan Magistrate, Saidapet at Chennai is quashed and affidavit of the second respondent/defacto complainant which had been signed by the 2nd respondent dated 01.04.2022, shall form part of Court records.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

jas/tsh



To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. Do-Through,
The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Inspector of Police,
J6 Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai - 600 041.
4. The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.P.Senthil Kumar, Advocate, S.R.No.27348

Cr1.O.P.No.9123 of 2022

SV(CO)
SU(13/05/2022)