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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

Cr1.O.P.No.9929 of 2022

1.Geetha

2.Kannan

...Petitioners

-Vs-

1. The State represented by,
The Inspector of Police,
Kallakuruchi Police Station,
Kallakuruchi.
(Cr.No.212/2022)

2.Pazhanivel

..Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records in Crime No.212/2022, pending on the file of the respondent police and quash the same as against the petitioners.

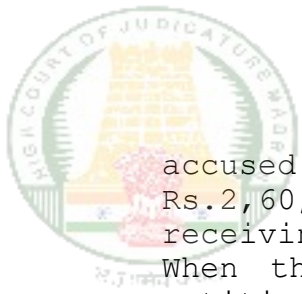
For Petitioners: Mr.R.Vivekananthan

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 in Crime No.212/2022, pending on the file of the respondent police and quash the same as against the petitioners.

2.The case of the prosecution is that the defacto complainant was working as a Driver in Dubai and during the pandemic period, he had come back to native place at Kallakuruchi. It is alleged that during such period, he got acquainted with the first petitioner(first accused) who introduced herself as a shareholder in the M/s.Gold Lfy Info India Private Ltd and further she informed that she is very close to the major shareholder one Maniraj (second accused). The accused persons had induced the defacto complainant to invest in the said company and assured to repay the principal money in twice the quantity of the same. On believing the words of the



accused persons, the defacto complainant had deposited a sum of Rs.2,60,000/- in the second accused Bank Account. After receiving the money, the accused persons failed to repay it. When the defacto complainant questioned about the money, the petitioners abused the defacto complainant and threatened him by using unparliamentary words. Therefore, the defacto complainant lodged a complainant against the petitioners. In view of the same, a case in Crime No.212 of 2022, has been registered against the petitioners by the respondent police for the offences under Section 294(b), 420 and 506(i) of I.P.C.

3.The learned counsel for the petitioners would submit that the petitioners are the accused Nos.1 & 3 and they are husband and wife. The defacto complainant deposited a sum of Rs.2,60,000/- in the second accused bank account. Subsequently, the second accused cheated the first and third accused/petitioners and also the defacto complainant. However, the petitioners have re-paid the amount of Rs.2,60,000/- to the defacto complainant. Therefore, a compromise has been entered into between the petitioners and the defacto complainant, pursuant to which, the defacto complainant has decided to withdraw the complaint given against the petitioners to the respondent police.

4.The learned Additional Public Prosecutor appearing for the first respondent would submit that the petitioners and the accused No.2 had cheated the defacto complainant for a sum of Rs.2,60,000/-. There are several cases pending against the second accused and no previous cases are pending against the petitioners.

5.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent.

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

7.The petitioners 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 second respondent has filed an affidavit to that effect. The relevant portions of the affidavit filed by the 2nd respondent/defacto complainant is extracted hereunder:-

'4. I state that myself and the petitioners had entered into a compromise by receiving the amount of Rs.2,60,000/- from the petitioners.



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



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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



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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 individual



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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."

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. Taking into consideration the facts and circumstances of the case and the compromise arrived between the parties, the continuity of the criminal proceedings would only cause oppression and frustration to the parties. It is the case of the petitioners that they have also been cheated by the second



accused in this case and that they having believed A2 and made the defacto complainant to invest monies, have repaid the money and compromised with the defacto complainant. Hence, in order to secure the ends of justice, this Court is inclined to quash the proceedings as against the petitioners.

14. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioners in Crime.No.212 of 2022 on the file of the respondent police is quashed and the Affidavit of the 2nd respondent shall form part of Court records.

15. It is made clear that the parties shall cooperate with the respondent police in continuing the prosecution against the second accused.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Inspector of Police,
Kallakuruchi Police Station,
Kallakuruchi.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Vivekanandhan, Advocate, S.R.No.30183

Cr1.O.P.No.9929 of 2022

PA(CO)
RGA(27/05/2022)