



Crl.O.P.No.19763 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.19763 of 2020 and
Crl.M.P.No.8094 of 2020

1.Shanmuga Sundaram
2.Yagna Narayanan
3.Kumar

...Petitioners

-Vs-

1.The Inspector of Police,
District Crime Branch,
Tirupur District.
(Crime No.4/2018).

2.Denzil D.Souza
3.Theriza D.Souza
(R3 impleaded vide Crl.M.P.No.2254/2022
dated 04.03.2022)
..Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to the above FIR in Crime No.4 of 2018 on the file of the 1st respondent police, in so far as petitioners concerned and quash the same.

For Petitioner : Mr.S.Kumaresan

For Respondent : Mr.V.Meghanathan
Government Advocate (Crl.Side) for R1
No appearance for R2



Mr.M.Dinesh for R3

ORDER

The Criminal Original Petition has been filed to quash the proceedings in Crime No.4 of 2018 on the file of the 1st respondent police, in so far as petitioners concerned.

2. The learned counsel for the petitioner would submit that the petitioners are respectively A1, A3 & A5. He would submit that the 2nd petitioner died on 23.02.2021 and the 4th accused in this case passed away on 21.05.2013, after registration of this case. He would submit that the case relates to impersonation and fabrication of documents. He would submit that the 1st petitioner is an innocent purchaser and the 3rd petitioner is a witness to the sale deed executed by the impersonator who has been arrayed as A2 in this case. He would submit that pending FIR, the parties have entered into a compromise, thereby the defacto complainant entered into a Memorandum of Understanding and the sale has been ratified in the Memorandum of Understanding. The wife of the defacto complainant had signed as a witness. Subsequently, the defacto complainant passed away on 09.04.2021 on account of Covid-19 and he is being represented by his wife Denzil D.Souza. He would submit that the fresh Memorandum of



Understanding has been entered between the 1st and 3rd petitioner and the legal heirs of the defacto complainant.

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

4.A Joint Compromise Memo has been filed before this Court, which have been signed by the petitioners and the third respondent/legal heir of the defacto complainant and also by their respective counsel. The petitioners and the 3rd respondent were present before this Court and they were identified by Mr.S.Sundharapandian, SSI, DCB. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves. A terms of the Joint Compromise Memo is extracted hereunder:-

"2.It is respectfully state that the 2nd respondent lodged a complaint before the 1st respondent police against the petitioners and the same was registered in Crime No.4 of 2018 dated 18.04.2018 for alleged offences under Sections 120(B), 468, 471, 419 and 420 of IPC.



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2.It is respectfully state that according to the defacto complainant/2nd respondent case is that, the land admeasuring to an extent of 1 acre 87 cents comprised in S.No.312/5 was originally allotted to his father at No.86, Karadivavi Village, Palladam Taluk, Tirupur District by the Land Reforms Commissioner by an assignment order dated 31.08.1970. Thereafter, on 26.12.2016 the defacto complainant father namely Edker Francus d.Souza. On 04.01.2018 when the defacto complainant went for paying the land tax, it was found that the name was transferred to the some other name:-Then, the above said FIR is registered against the petitioners.

3.It is submitted that the 1st petitioner/1st accused is an innocent purchaser from the vendor for a valuable consideration vide Sale Deed Document No.992/2011 dated 24.01.2011 on the file of SRO, Palladam. The vendor/2nd accused after obtaining NOC from the competent authority and sole the property in my favour and the defacto complainant does not have any valid documents to prove his title. The 2nd petitioner/3rd accused is an attesting witness and he died on 23.02.2021 who is attesting witness in the sale deed. The 3rd petitioner/5th accused is the power holder of 1st petitioner.



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4.It is further submitted that the 4th accused namely Ponnusamy in the above crime Number, who died on 21.05.2013 prior to the registration of Crime No.4 of 2018 dated 10.04.2018.

5.The defacto complainant does not have any sale deed or encumbrance in his name in the Sub-Registration Office, Palladam and he admitted the sale deed in favour of the 1st petitioner after receiving the compensation by entering MOU dated 04.03.2020.

6.It is further submitted that now at the instance of the common man as well as the well-wishers of both persons, the parties are ready and settled the issue amicably without any pressure. It is further pertinent to mention that due to that effect on 04.03.2020, the petitioners and the defacto complainant entered into Memorandum of understanding in respect of the subject matter. The defacto complainant/2nd respondent was compensated with a sum of Rs.7,00,000/- towards subject matter of the property and he admits the sale deed.

7.The 1st petitioner herein filed a Civil Suit in O.S.No.141/2019 on the file of District Munsif, Palladam and the same has been decreed, the 3rd respondent herein



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validate the same and she does not have any claim right over the same. Subsequently, after the death of 2nd respondent/defacto complainant who is the attesting witness in the MOU dated 04.03.2020 also acknowledged the sale deed dated 24.01.2011 vide Document No.992/2011 dated 24.01.2011 on the file of SRO, Palladam.

8.The petitioner herein is an innocent purchaser of the property aforesaid and he did not tampered any government records. Wherein, the 3rd respondent wife of 2nd respondent signed as witness in the said MOU. The 3rd respondent is a sole legal heir of deceased defacto complainant accept terms and conditions of the MOU entered between 1st petitioner and her deceased husband/2nd respondent herein. The said MOU dated 04.03.2020 and the same has been admitted by the 3rd respondent and acted upon.

9.Thereafter, the 2nd respondent was died on 09.04.2021 due to Covid-19 disease. In the said circumstances, the petitioners herein has filed implead petition to implead the 3rd respondent as necessary party in Crl.M.P.No.2254 of 2022 in Crl.O.P.No.19763 of 2020 as a sole legal heir. When the above matter came up for hearing before this Hon'ble Court on 11.03.2022, the



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Hon'ble High Court was pleased to allow the implead petition and directing the petitioners and the 3rd respondent to file a fresh compromise memo.

Hence, as per the terms of the compromise, the defacto complainant's wife/3rd respondent herein is now filing this compromise memo and she has no objection to quash the above FIR in Crime No.4 of 2018 pending on the file of the 1st respondent Police, Tirupur.

5. 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."

6. 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.



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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."

7. 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



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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,



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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."

8. 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



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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



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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."

9. 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.

10. In the case at hand, the petitioners are charged for the offences punishable under Sections 120(b), 468, 471, 419 and 420 of IPC. Now, the petitioners and the legal heir of the defacto complainant have amicably settled their disputes between themselves and they have also filed Joint Compromise Memo dated 16.03.2022, signed by them.

11. This Court enquired the Legal heirs of the defacto complainant she had informed that she is sole legal heir of deceased second respondent/defacto complainant and admitted the terms of MoU dated 04.03.2020 between the petitioners and stated no objection in quashing the FIR in Cr.No.4 of 2018 pending on the file of the 1st respondent.

12. 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



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prejudice to the parties, hence, in order to secure the ends of justice, this Court is inclined to quash the proceedings as against the petitioners.

13. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioners in Cr.No.4 of 2018 pending on the file of the 1st respondent is quashed and Joint Memo of Compromise signed by both the parties dated 16.03.2022, shall form part of Court records. Consequently, connected miscellaneous petition is closed.

16.03.2022

jas/tsh

To

1.The Inspector of Police,
District Crime Branch,
Tirupur District.

2.The Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDIRA. J.,

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