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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.20636 of 2021

1.Kalaivanan
2.Senthilkumar
3.Kalaimagal

...Petitioners

-Vs-

1. The Inspector of Police,
All Women Police Station,
Mannargudi, Tiruvarur District.
Crime No.7 of 2019.

2. Kiruba

..Respondents

Prayer :

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records in P.R.C.No.65 of 2020 on the file of the learned Judicial Magistrate No.1, Mannargudi and quash the same.

For Petitioners : Mr.M.Subash

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1
Mr.K.Karuppiah Mooppanar for R2

O R D E R

The Criminal Original Petition has been filed to call for the records in P.R.C.No.65 of 2020 on the file of the learned Judicial Magistrate No.1, Mannargudi.

2. The case of the prosecution as per defacto complainant/Kiruba is that the first petitioner/Kalaivanan induced the defacto complainant under the promise of marrying her and had sexual intercourse with her and thereafter refused to marry her.



3. Coming to know that the first petitioner got engaged to some other person, the defacto complainant had questioned the accused 2 and 3 and they have abused the defacto complainant and criminally intimidated her. Based on the complaint, a case in Cr.No.7 of 2019 was registered against the petitioners. The first respondent after completion of investigation filed the final report for the offence under Sections 417, 376, 294(b) and 506(i) IPC. The matter is pending for committal on the file of the Judicial Magistrate No.I, Mannarkudi.

4. The learned counsel for the petitioner would submit that the defacto complainant and the first petitioner were having love affair from the year 2012 and subsequently they had physical relationship from the year 2015. The second respondent/defacto complainant due to frustration and apprehending that the first petitioner will not marry her had given a complaint against the first petitioner and his sister and brother in law who are respectively petitioners 2 and 3 herein. He would submit that the matter has been compromised between the parties. He would further submit that due to the intervention of relatives and well wishers, the matter has been compromised between the parties and the parties have also got married on 28.07.2020 at Tiruvarur, Needamangalam and the marriage was registered before the Sub Registrar, Needamangalam vide Marriage Sl.No.TMR/Needamangalam /23/2020.

5. The first petitioner and the second respondent are now living together as husband and wife. The parties have also filed joint memo of compromise signed by both the parties and they are identified by their respective counsel on record. The second respondent/defacto complainant has filed affidavit, the relevant portion of the affidavit is reproduced hereunder :-

'2.I submit that the 2nd and 3rd petitioners are my neighbors while so the 1st petitioner being a brother of 3rd petitioner when visited her sister's house had introduced to me further both we were felt in love in the year of 2012 and subsequently developed our relationship. When that being so from the year 2015 the 1st petitioner started to had a physical relationship with me on the strength of false promise to marry and on believing the same I was spending time with him on several occasions.

3.I submit that thereafter sometimes the 1st petitioner refused to marry me and on 22.05.2019 when I approached the 2nd and 3rd petitioners to marry the 1st petitioner for which both of them threatened me with dire consequences using filthy



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language. Hence I lodged a complaint.

4.I submit that I had given the above complaint against the petitioners on frustration over the refusal of marriage by the 1st petitioner, later the 1st petitioner realized his mistake further both myself and the 1st petitioner got married on 28.07.2020 with blessings both family members and we are peacefully leading their matrimonial life.

5.I submit that whereas the petitioners entered into a compromise with me as both the 1st petitioner and I got married and as per the compromise I am ready to settle the dispute and also willing to withdraw the case in P.R.C.No.65/2020 on the file of Judicial Magistrate No.1, Mannargudi.

6.I submit that after I and the 1st petitioner got married I agreed to withdraw the a case and also agreed to give no objection for quashing case in P.R.C.No.65/2020 on the file of Judicial Magistrate No.1, Mannargudi.'

6. The case has been registered for offences under Sections 417, 376, 294 and 506(i) 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.

7. 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



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(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."

8. 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."

9. 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.



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(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."



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10. 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/delegate parts of the body, nature of weapons used etc. However, such an exercise



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."

12. In the Case at hand, the petitioners are charged for the offences punishable under Sections 417, 376, 294(b) and 506(i) of IPC. Now, the petitioners and the 2nd respondent/defacto complainant have amicably settled their disputes themselves. The 2nd respondent/defacto complainant has also filed an affidavit stating that she got married with the first petitioner on 26.07.2020 and they are leading their matrimonial life.

14. 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 petitioners.

15. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioners in PRC.No.65 of 2020 on the file of the Judicial Magistrate No.I, Mannargudi is quashed and Joint Memo of Compromise signed by both the parties and the Affidavit of the 2nd respondent dated 27.10.2021, shall form part of Court records.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1, Mannargudi.
2. The Inspector of Police,
All Women Police Station,
Mannargudi, Tiruvarur District.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.20636 of 2021

GPL(CO)
PM/23/03/2022