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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.22577 of 2021
and
Crl.M.P.No.12273 of 2021

Mr.N.Bhuvanendra Pandian

... Petitioner / Sole Accused

Vs.

1. State Represented by
The Inspector of Police,
All Women Police Station,
Guindy, Chennai.
(Crime No.17 of 2021)

(Amended as per Crl.M.P.No.12273 of 2021
in Crl.O.P.No.22577 of 2021 dated 04.03.2022)

...1st Respondent / Complainant

2. Ms.Vandana

...2nd Respondent / Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and quash the FIR in Crime No.17 of 2020 dated 01.12.2020 on the file of the 1st respondent Police as far as the petitioner is concerned.

For Petitioner : Mr.P.K.Ganesh

For Respondent 1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For Respondent 2 : Mr.K.Balasubramanian

O R D E R

The Criminal Original Petition has been filed to call for the records and quash the FIR in Crime No.17 of 2020 dated 01.12.2020 on the file of the 1st respondent Police as far as the petitioner is concerned.

2. The learned Counsel appearing for the petitioner would submit that the petitioner and the 2nd respondent/de-facto



complainant are colleagues working in the same office and the relationship between them was consensual in nature. However, due to misunderstanding, the de facto complainant has given a false complaint, as if the petitioner had committed rape on her. However, the matter has now been compromised between the parties. The 2nd respondent/de-facto complainant has also filed an affidavit stating that the petitioner and the de-facto complainant were in love and she had preferred the complaint with an intention that the petitioner will marry her and she also stated that the matter has been compromised between themselves.

3.The learned Additional Public Prosecutor appearing for the 1st respondent would submit that based on the complaint given by the 2nd respondent/de-facto complainant a case in Crime No.17 of 2021 has been registered for the offences under Sections 417 and 376 of IPC. The case is still pending investigation.

4.The learned Counsel appearing for the 2nd respondent/de-facto complainant would submit that the de-facto complainant and the petitioner were colleagues and the relationship between them was consensual in nature and the de-facto complainant hoping that the petitioner will marry her, had given a complaint as if the petitioner had committed rape on her. He would further submit that the matter has been compromised between the parties and thereby the de-facto complainant does not want to pursue the matter any more and she has no objection in the FIR being quashed, based on the compromise entered into between the parties.

5.A Joint Compromise memo has been filed before this Court, which has been signed by the petitioner and the second respondent and also by their respective counsel. The petitioner and the second respondent were also present before this Court and they were identified by the respondent Police and their respective counsel. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves. The relevant portion of Joint Compromise Memo dated 29.03.2022 is extracted hereunder :-

"2.On the complaint lodged by the 2nd respondent, initially a FIR in Crime No.33 of 2020 was registered by the Inspector of Police, All Women Police Station, Panruti, Cuddalore District for offences under Sections 417 and 376 of IPC and subsequently on the point of jurisdiction the FIR was transferred to the 1st respondent, the 1st respondent herein assigned Crime No.17 of 2021 for offences under Section 417 and 376 IPC and the same is pending.

3.The 2nd respondent lodged the complaint with the intention that the petitioner will marry her, after



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registering of the FIR in Crime No.17 of 2021 also the 2nd respondent approached the petitioner for marrying her, since he has refused to marry the 2nd respondent, upon advice from the elders and relatives the 2nd respondent have decided not to proceed further in the above pending case against the petitioner for the reason that the parents of the 2nd respondent have started searching alliance for her marriage, hence she have decided to withdraw the pending case against the petitioner.

4.The petitioner and the 2nd respondent /de-facto complainant herein undertake and assure that each of them will not lodge any complaint against each other in future.

5.The 2nd respondent / de-facto complainant undertake to cooperate with the petitioner to quashing the criminal proceedings pending against the petitioner.

6.The 2nd respondent/defacto complainant agree to appear before the Hon'ble High Court and give his consent by filing a consent affidavit in CrI.O.P.No.22577 of 2021 for quashing the proceedings pending against the petitioner in Crime No.17 of 2021 pending on the file of the 1st respondent."

6.It is submitted by the parties and their counsels that the 2nd respondent has willingly consented to the nullification of the criminal proceedings, even though offence are non-compoundable.

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 (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



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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



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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.

(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.



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(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."

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-



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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 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."

11. 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.

12. In the case at hand, the petitioner is charged for the offences punishable under Sections 417 and 376 of IPC. Now, the petitioner 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 she and the petitioner moved with each other and their relationship was consensual in nature.

13. Taking into consideration the facts, the de-facto complainant is aged about 28 years and she has given a complaint that the petitioner has committed rape on her. Admittedly, both of them were colleagues working in the same office. The de-facto complainant had filed an affidavit before this Court contending that the relationship between them is consensual in nature. The de-facto complainant had relationship with the petitioner with the hope that the petitioner will marry her. Now she has rescinded from the statement and she has now stated that the relationship is consensual in nature. The case is at the stage of investigation and the second respondent/defacto complainant is not interested in prosecuting the criminal proceedings.

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 petitioner.

15. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner in



Crime No.17 of 2020 on the file of the 1st respondent Police is quashed and Joint Memo of Compromise signed by both the parties and the Affidavit of the 2nd respondent dated 29.03.2022, shall form part of Court records. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vkr/nti

To

1. The Inspector of Police,
All Women Police Station,
Guindy, Chennai.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.P.K.Ganesh, Advocate, S.R.No.24878

+1cc to Mr.K.Balasubramanian, Advocate, S.R.No.24879

Cr1.O.P.No.22577 of 2021
and
Cr1.M.P.No.12273 of 2021

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NSK 25/04/2022