



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1367/2023

Sheshrao s/o Makhram Jadhav,
aged 50 yrs., Occ. Service,
R/o. Gayatri Nagar, Hingna
Road, Akola.

..... APPLICANT
(ACCUSED)

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Barshitakli,
Akola.
2. Shilpa Jagdish Jadhav,
aged about 33 yrs., Occ. Household,
R/o. Jamvasu, Tal. Barshitakli,
Dist. Akola.

..... NON-APPLICANTS

Mr. Abhishek S. Shukla, Advocate for applicant.
Mr. S.M. Ghodeswar, APP for non-applicant No.1.
Mr. Pushkar A. Deshpande, Advocate for non-applicant No.2.

CORAM : **VINAY JOSHI AND**
VALMIKI SA MENEZES JJ.

DATE OF JUDGMENT: **09.10.2023**

ORAL JUDGMENT : (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This application poses a question about propriety in invoking inherent powers of this Court in the premise of a settlement, after recording of the evidence of material witnesses.

4. The applicant, a sole accused, is facing a trial arising out of Crime No. 696/2020 for the offences punishable under Sections 354, 354-A, 452, 504, 506 of the Indian Penal Code ('IPC'). The applicant (accused) is the elder brother of informant's husband. The informant lodged a report On 12.12.2020 regarding an incident dated 10.12.2020. It is the informant's contention that on that day around 02.00 p.m., while she was alone at her house with her minor daughter, the accused arrived, caught hold of her from behind and touched her breast. The informant somehow escaped and raised a protest. The accused left the place after abusing and threatening the informant. The informant telephonically called her father, returned to her parental house and then lodged a report. The Police

investigated the matter, and on its completion filed a final report. On denial of guilt by accused, trial commenced. The prosecution examined three witnesses including the informant. Besides the evidence of the informant, evidence of other witnesses are of hearsay nature having no significance. The informant has supported the prosecution in her evidence. At this stage, a compromise was arrived at between the parties resulting in invoking inherent jurisdiction of this Court to quash the criminal prosecution, namely RCC No. 84/2021 pending on the file of Judicial Magistrate First Class.

5. The informant has appeared in person along with her counsel and has filed a written statement. She made a categorical statement that, she along with her family, have resolved the dispute, and she has rejoined the company of her husband. In view of the settlement, she is not willing to continue the criminal prosecution and gave her consent to quash the criminal proceeding. The informant remained present in Court and was accompanied by her husband. She has reaffirmed the settlement, and has expressed unwillingness to continue with the criminal prosecution. In addition,

she has stated that she left the matrimonial home due to the incident but since she arrived at a settlement, for last two months she is residing with her husband and her child aged five years. She stated that continuation of the criminal prosecution would have direct impact on her marital life.

6. Learned counsel appearing for the applicant would submit that the case has its own features, as the dispute was within the family. The accused is the elder brother of informant's husband. The settlement has caused the reunion of the couple. He would submit that the offence cannot be categorised as heinous or anti-social. Continuation of prosecution would be to the detriment of both sides. In these peculiar facts, he urged us to invoke inherent powers of this Court to quash the proceeding.

7. Per contra, the learned APP does not dispute the factum of settlement, however resists the application by contending that since the trial has progressed, it is not in the interest of justice to quash the proceedings midway. He would submit that already the Trial Court has recorded evidence of the informant and two other witnesses. According to him, since the evidence supports the case of the

prosecution, it is for the Trial Court to judge the same. He would submit that at the most, in case of conviction, the Trial Court may be made aware of the settlement which shall be considered while passing an appropriate sentence. In substance, the objection revolves around the stage of trial at which the settlement can be accepted. Opposition is on the ground that after commencement of trial and recording of evidence of material witnesses, this Court ought not to exercise its inherent powers.

8. The offence punishable under Section 354 of the IPC is of non-compoundable nature. In catena of decisions it has been ruled that irrespective of the provisions of Section 320 of the Code of Criminal Procedure (Code), the powers under Section 482 of the Code can be exercised in fit cases. There is no denial that this Court can exercise its inherent powers in all cases of non-compoundable nature. While answering a reference, the Supreme Court in **Gian Singh Vs. State of Punjab and another, (2012) 10 SCC 303** has exhaustively dealt with the issue. We can usefully refer the observations made in paragraph 61 of the decision which read as under:-

"61. 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. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would

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be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding".

9. Notably, the above observation indicates that this Court may quash criminal proceedings in certain circumstances, but, not in offences falling in the category of heinous offences and of serious nature. Depending upon the facts and circumstances of each case, irrespective of whether the offence falls in non-compoundable category, this Court can quash the proceeding to secure the ends of justice. The same question again fell for consideration before the Supreme Court in case of **Narinder Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466**. After considering the earlier decision, the Supreme Court has summed up the position in para 29 which reads as below:-

"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 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, 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 the light of the above dictum, it is no more *res integra* that the High Court has inherent powers to quash the criminal proceeding based upon a settlement in non-compoundable cases subject to the rider as stated therein. The principles laid down in both the decisions would guide us in dealing with applications under Section 482 of the Code at their initial stage. In the case at hand, resistance was not on the point of the nature of the crime, but essentially on the aspect of the stage of trial i.e. trial has progressed.

11. Learned counsel appearing for the applicant has laid emphasis on the Full Bench decision of this Court in the case of **Maya Khandare and another Vs. State of Maharashtra, (2021) SCC Online Bom 3**, where in one of us was a party (Vinay Joshi, J.), and would submit that there is no difficulty in quashing the proceeding irrespective of the commencement of the trial. He would submit that in the above decision this Court has ruled that, inherent powers

under Section 482 of the Code can be exercised in rare cases post conviction and in non-compoundable cases, based upon a settlement. The Full Bench of this Court has answered the following specific question in the said reference:-

“(A) In a prosecution which has culminated in a conviction, whether the power under section 482, Criminal Procedure Code ought to be exercised for quashing the prosecution/conviction altogether; (instead of maintaining it and considering the issue of modification of the sentence) upon a settlement between the convict and the victim/complainant ?”

12. The Full Bench of this Court, after taking a resume of various earlier pronouncements on the field, concluded that, generally the Court shall not venture into exercise of inherent powers post conviction merely on account of settlement between the parties. The wise course to be taken, would be to permit the convicted party to bring to the notice of appellate/revisional Court the aspect of settlement. Further, it is observed that only in rarest of rare cases, the Court may quash the criminal proceeding post conviction for a non-compoundable offence on settlement between the parties. Further illustrating, the Court expressed that quashing should be resorted to where a jurisdictional issue goes to the root of the matter,

or conviction relates to matrimonial disputes where the parties have settled the differences. It is cautioned that such exercise of jurisdiction should be limited to the rarest of the rare cases where the Court finds it necessary to prevent abuse of the process of the Court or to secure the ends of justice. In the light of said decision, if exceptional circumstances are made out, this Court can well exercise inherent jurisdiction to achieve the object behind investment of inherent powers.

13. Inherent powers vested in this Court have no statutory limitation, but have to be exercised and guided by the object, namely (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. The non-obstante clause in Section 482 of the Code reaffirms the powers of this Court as having overriding effect on rest of the provisions of the Code, the limitations are self imposed.

14. A three-Judge Bench of the Supreme Court in the latter decision in **State of Madhya Pradesh Vs. Laxmi Narayan and others, (2019) 5 SCC 688** has clarified the position in para 15 which reads as under:-

“15.1 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.

15.2 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.

15.3 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.

15.4

15.5 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.”

15. It is explicitly clear that there is no embargo on the exercise of jurisdiction under Section 482 of the Code where the criminal proceedings are not serious in nature nor heinous nor having social impact. Inherent powers could be exercised preferably at the initial stage, but there is no statutory embargo to exercise them post conviction in rare cases with an object to secure the ends of justice. The invocation of inherent powers are with an object of securing the ends of justice and therefore, there could be no limitation on such powers being exercised to achieve the statutory object. In the above referred decision, it has been crystallized that the powers can be exercised in non-compoundable offences provided they are of private nature, family matters or do not have a serious impact on the society. In view of the Full Bench decision of this Court, if on given facts, the Court finds that the case is falling in exceptional category and quashing necessitates to secure the ends of justice, irrespective of conviction the powers could be exercised.

16. In the light of above position the question that directly falls for our answer is - whether the powers can be exercised midway of a trial, to be specific, after recording of the evidence of material

witnesses, that too when the witness has particularly stood by the prosecution case. At this juncture, it is necessary for us to state that the initial presumption of innocence of the accused remains intact despite conviction by the First Court and it would continue till the order of conviction attains finality. Sections 482 of the Code does not contemplate or specify any particular stage when these powers could be invoked.

17. In that view, we find no difficulty in exercising inherent powers irrespective of the fact that the trial is under progress. More the reason, when the evidence is yet to be appreciated and, initial presumption is still intact. Obviously, the said exercise can be done, if exceptional circumstances are carved out in the line of the Full Bench decision of this Court. We may hasten to add that when according to the Full Bench decision in case of Maya Khandare (supra), quashing is permissible post conviction (in exceptional cases) by applying the same analogy quashing can also be done at pre-conviction stage as it stands on a better footing.

18. Learned counsel for the applicant has relied on the decision of the Supreme Court in case of **Ramgopal and another Vs. State of Madhya Pradesh, 2021 SCC Online SC 834** to contend that if the criminal proceeding pertain to non-heinous offences or of a private nature, it can be quashed irrespective of conviction by the First Court. Special emphasis is laid on para 13 of the decision, which reads as below:-

“It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in

cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh vs. State of Punjab & Ors.³ and Laxmi Narayan (Supra)."

19. The above decision has endorsed the exercise of extraordinary powers irrespective of conviction, provided it is for securing the ends of justice

20. In the light of the Full Bench decision in the case of Maya Khandare (*supra*), this Court may quash the criminal proceeding post conviction for non-compoundable offences on settlement, in rarest of rare cases. The term "rarest of rare" is to be understood not in the context of the offence of murder, but in ordinary sense. In other words, this Court can venture into such exercise post conviction, if an exceptional case is made out. After conviction, the remedy of appeal/revision is available; still in exceptional cases quashing is held permissible in the above decision. In the present case, trial has not been completed, therefore the remedy of appeal is not available. One cannot be asked to wait till conviction, file an appeal and then seek quashing. In this case, the Trial Court has not recorded a finding of guilt, rather the said stage is yet to come. No doubt, the

chances of conviction are high, since the informant has led evidence supporting the prosecution case. In case of **Shamsher Singh alias Shera Vs. State of Haryana, (2002) 7 SCC 536**, the Supreme Court held that presumption of innocence of an accused, disappears on his conviction, subject to orders to be passed in further appeals. In this case, the trial has yet not ended and therefore, the accused is still entitled to the initial presumption of innocence. Since in the case of *Maya Khandare (supra)*, it has been ruled that even post conviction, inherent powers can be used due to a settlement in exceptional circumstances, we find no hurdle to exercise powers at pre-conviction stage on the same analogy, subject to the exceptions laid down.

21. The very object of exercising inherent powers is to secure the ends of justice. In order to further the statutory object, no limitations have been imposed. There was no reason whatsoever to restrict powers under Section 482 of the Code after recording of the evidence of material witnesses. In the light of that position, on facts, if a case of exceptional nature is made out, certainly, this Court can

step in to achieve the object of the powers invested in the Court to secure the ends of justice.

22. This takes us back to the facts of the case. The informant is the sister-in-law of the applicant/accused. She was living with her husband and minor daughter at village Patur whilst her husband's elder brother (accused) was resident of Akola. On the day of the incident while the informant was alone at her house, the accused touched her breasts and embraced her from behind. The informant sharply reacted against the act, and went to her parents house with her minor child. It is not in dispute that the trial has commenced in which the informant's evidence has been recorded. The informant has deposed in consonance with the Police report. The prosecution has examined two more witnesses, however they fall in the category of hearsay evidence. At this juncture, quashing is sought on account of mutual settlement.

23. The offence for which the applicant is charged is of outraging the modesty of a woman coupled with sexual harassment. The maximum punishment for the offence under Section 354 of the

IPC prescribed under law is an imprisonment term which may extend to 5 years. The Court must consider all attending circumstances, rights of the parties, impact of the order and all other relevant factors. In the case of Gian Singh (*supra*), inter alia it has been observed that in the case of a matrimonial dispute relating to dowry or a family dispute, the Court may exercise inherent powers. It has been explained that the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation would tantamount to abuse of the process of law despite settlement. Whether to secure the ends of justice, it is appropriate that the case is put to an end and if the answer is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceeding.

24. An exception is to be carved out with a sole motive of securing the ends of justice. Herein, the parties are closely related to each other. Accused is the elder brother of informant's husband. Considering the close relationship, settlement was arrived at resulting in reunion of the couple which was unsettled due to the occurrence. The dispute was within family members. Soon after the

occurrence, the informant started to live separately with her minor child at her parental house. Only because the matter was settled, she has rejoined the company of her husband with her child. It is evident that informant's matrimonial life was at stake, unfortunately without any mistake on her part. It is sheer reality that because she agreed for discontinuation of prosecution, her husband agreed to stay with her. Not only the future of lady, but the future of innocence child was unfortunately linked with the settlement. In cases of matrimonial dispute mostly resulting in offences punishable under Section 498-A of the IPC, quashing is permitted with an object to save the marriage. Rather, in the existing facts, the same result would be achieved by acceding to the prayer for quashing.

25. In absence of an inflexible rule of law, depending upon the facts of each case, inherent powers can be exercised. In this regard we may usefully refer to the observations of the Supreme Court in case of **State of Karnataka Vs. Muniswamy and others, (1977) 2 SCC 699**, in para 9 of the decision, the Court has held as below:-

“9..... Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as

wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula.

26. In another decision of the Supreme Court in case of **R.P. Kapur Vs. The State of Punjab, AIR 1960 SC 866**, it is observed by the Supreme Court that, it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction.

27. Legislature has not limited the powers of this Court as guided by the decisions in case of Narendra Singh and Gian Singh (*supra*). No limitation is imposed by the statute in exercise of powers. The very purpose of investing uncontrolled self guided powers is to achieve the object of preventing the misuse of the process of the Court, and to secure the ends of justice. These powers are purposefully vested only with higher Courts so that on case to case basis, with a tomb of experience, the Court would exercise it in befitting cases to achieve the ultimate object. It is apparent that acceptance of settlement resulting into quashing would not be at

anybody's detriment, rather it would be in the interest of both parties. Conversely, there is every possibility that the informant and her child probably may not be allowed to stay with her husband. The very purpose and object of the rule of law is to see the well being of society. After all, the law exists to cater the need of society and not to become an obstacle in the life of common man. In the above peculiar facts, we are of the considered view that the case falls in the exceptional category to exercise the inherent powers to save the matrimonial life of the informant as well as secure the future of a minor child. The inherent powers of the High Court are designed to achieve a salutary public purpose. Our conscience does not permit us to give the upper hand to technicalities over the lives of the people for whom the law is meant. The ends of justice are higher than the ends of mere law though justice has got to be administered according to law made by the legislature.

28. Though the evidence of the material witness is recorded and the case is of non-compoundable nature, we find that a very exceptional case is made out to pursue us to exercise our inherent powers to do the complete justice. In that view of the matter, the

application is allowed. We hereby quash and set aside FIR vide Crime No. 696/2020 for the offence punishable under Sections 354, 354-A, 452, 504, 506 of the IPC along with Criminal Case No. 84/2021 pending on the file of Judicial Magistrate First Class, at Barshitakli.

29. Application stands disposed of in above terms.

(VALMIKI SA MENEZES J.)

(VINAY JOSHI, J.)

Gohane