

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

I.A.Nos.2 & 3 of 2023
in/and
Crl. Petition No.3208 of 2023

COMMON ORDER:

This Criminal Petition, under Section 482 CrPC, is filed with a prayer to quash the proceedings in S.C.No.310 of 2018 on the file of the Court of II Additional Assistant Sessions Judge, Kakinada, and to set aside the judgment of conviction and sentence, dated 13.05.2019, passed therein against the petitioner.

2. Heard *Sri P. Rajesh Babu*, learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent-State.

3. The Sub Inspector of Police, Karapa Police Station, filed charge sheet against the petitioner/accused in Crime No.91 of 2018 for the offences punishable under Sections 498-A and 307 IPC. The learned IV Additional Judicial First Class Magistrate, Kakinada, took the case on file and committed to the Sessions Division, Rajamahendravaram, in P.R.C.No.35 of 2018. The learned Sessions Judge, Rajamahendravaram, after numbering the case as S.C.No.310 of 2018, made over the same to the Court of II Additional Assistant Sessions Judge, Kakinada. The learned II Additional Assistant Sessions Judge, Kakinada, found the

petitioner/accused not guilty of the offence under Section 498-A IPC and acquitted him of the charge for the said offence, however, he found him guilty of the offence under Section 307 IPC and sentenced him to suffer simple imprisonment for a period of five years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year, *vide* judgment, dated 13.05.2019, passed in S.C.No.310 of 2018. Aggrieved by the judgment of conviction, the petitioner preferred appeal in Criminal Appeal No.171 of 2019 on the file of the Court of IV Additional Sessions Court, East Godavari, at Kakinada, and the same is pending.

4. Pending the Criminal Petition, the parties moved I.A.Nos.2 & 3 of 2023 under Sections 320(2) and 320(6) r/w 482 of Code of Criminal Procedure with a prayer to permit the parties to compromise the case and to record the compromise between the parties, set aside the judgment of the Court below, and, accordingly acquit the petitioner-accused.

5. When the matter was taken up, the petitioner-accused and 2nd respondent-complainant are present. They produced copies of their respective identity proofs. They are also identified by their respective counsel. When examined, they stated that they amicably settled the matter and the terms of compromise are reduced into writing in the form of joint memo, which is signed by the parties

and their counsel. They asserted the terms of the compromise and stated that they have voluntarily and willingly entered into compromise without any force or pressure from any quarter.

6. In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another**¹, the Hon'ble Apex Court again summarised and laid down principles which emerged from the precedents on the subject, in paragraph no. 16 of the judgment, which are as follows:-

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1 Section 482 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;

16.2 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 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 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;

¹ (2017) 9 SCC 641

16.4 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;

16.5 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 formulated;

16.6 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;

16.7 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 in so far as the exercise of the inherent power to quash is concerned;

16.8 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;

16.9 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

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9, 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."

7. Though the offence under Section 307 of I.P.C is not compoundable, after going through the contents of the affidavits filed in I.A. Nos. 3 and 4 of 2023 and the joint memo stating that 2nd respondent/*de facto* Complainant and the petitioner/ accused, due to the intervention of elders, are living together happily under one roof, it is deemed appropriate to compound the offence, in the interest of both the parties and continuation of criminal proceedings may affect their future.

8. Further, this Court in **Sk. Kasim Bee and Ors. vs. The State of Andhra Pradesh and Ors**² observed as follows:

"7. At this juncture, it may be appropriate to refer to the expression of the Hon'ble Supreme Court in **Narinder Singh & Others v. State of Punjab & another**³ in the context of

² I.A. Nos. 3 and 4 of 2022 in Crl. Petition No. 6386 of 2022
[decided on 05.09.2022]

³ 2014 (6) SCC 466

quashing an offence under Section 307 of I.P.C., which reads thus:

"(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above....."

8. The Hon'ble Apex Court also opined that the Court can also be swayed by the fact that settlement between the parties is going to result in harmony between them which may lead peaceful life. In the present case, the compromise is voluntary and in the interest of both the parties. Therefore permission is granted to compound the offence. Accordingly, compromise is recorded in terms of the joint memo filed along with the petition and the petitions are ordered."

9. In **Gian Singh Vs. State of Punjab and Ors.**⁴, the Supreme Court held as follows:

"61. The position that emerges from the above discussion can be summarised 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

⁴ (2012)10 SCC 303

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. 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 predominatingly 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 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."

10. The marriage of the *de facto* complainant and the accused was performed in the year 2009, and out of the wedlock, she gave birth to a male child. Disputes arose between the parties as the accused suspected the character of the *de facto* complainant. Thereafter, she was living separately along with her son. However, during the pendency of the case before the trial Court, due to intervention of elders, both parties are living together under one roof. Now, the parties came up with the present petitions. In the circumstances, I.A.No.2 & 3 of 2023 are allowed and the petitioner-accused and the 2nd respondent-complainant are permitted to compound the offence.

11. Consequently, the Criminal Petition is allowed and the judgment, dated 13.05.2019, passed in S.C.No.310 of 2018 on the file of the Court of the learned II Additional Assistant Sessions Judge, Kakinada, whereby the accused was found guilty for the offence under Section 307 IPC, is set aside and the petitioner-accused is found not guilty of the offence under Section 307 IPC

and is acquitted of the said offence. His bail bonds shall stand cancelled. As a consequence, proceedings in S.C.No.310 of 2018 on the file of the Court of the learned II Additional Assistant Sessions Judge, Kakinada, are quashed.

Miscellaneous petitions pending, if any, shall stand closed.

B. S.BHANUMATHI, J

03.05.2023
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