

(2015) 03 KAR CK 0296
In the Karnataka High Court
Case No : Criminal Petition No. 201119/2014

Gaddeppa

APPELLANT

Vs

Mallamma and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 320, 320(1), 320(5), 401
Penal Code, 1860 (IPC) — Section 323, 326, 498-A, 504

Citation : (2015) 03 KAR CK 0296

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : S.G. Math, for the Appellant; Nagaraj Patil, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—Petitioner and respondent No. 1 are present. Learned counsel for the petitioner and learned counsel for respondent No. 1 are also present. They have presented a joint memo by way of compromise under Section 482 of Cr.P.C., seeking permission to compound the offences punishable under Sections 498-A, 323, 326 and 504 of IPC, for which offences the petitioner was convicted and sentenced to undergo imprisonment in C.C. No. 13/2009 vide judgment dated 15.04.2014 on the file of JMFC, Lingasugur. The said judgment of conviction and sentence is challenged before the Principal District and Sessions Judge, Raichur, in Criminal Appeal No. 22/2014 and the same is pending.

2. The petitioner has sought for quashing of the said criminal appeal pending before the District and Sessions Judge, Raichur and consequently, permit the parties to compound the offences as noted above.

3. I have carefully perused the joint compromise petition and also affidavit filed by the petitioner and respondent No. 1 in that regard. It is specifically stated in the joint memo that the petitioner and respondent No. 1 are the husband and

wife respectively and in fact, due to some differences in the family, wife has filed a first information report in Crime No. 121/2008 for the alleged offences punishable under Sections 498-A, 504, 323 and 326 of IPC and after investigation, a charge sheet was filed in C.C. No. 13/2009. The petitioner was tried in the said criminal case and ultimately, he was convicted for the above said offences and sentenced to undergo simple imprisonment for two years with fine of Rs. 1,000/- for the offence punishable under Section 326 of IPC and simple imprisonment for six months with fine of Rs. 300/- for the offence punishable under Section 323 of IPC and simple imprisonment for six months with fine of Rs. 500/- for the offence punishable under Section 498-A of IPC and simple imprisonment for three months with fine of Rs. 300/- for the offence punishable under Section 504 of IPC with default clauses. After the judgment of conviction and sentence passed by the Trial Court, petitioner herein has preferred appeal in Criminal Appeal No. 22/2014 on the file of the Principal District and Sessions Judge, Raichur, and at present, the said case is pending for hearing on merits. In the meantime, the records also disclose that wife has filed a petition in Criminal Miscellaneous No. 116/2012 under Section 125 of Cr.P.C., seeking maintenance from the petitioner herein. When that matter is pending, it appears, the present petition is filed before this Court for quashing of the proceedings before the criminal Court in the above said criminal appeal. The parties have compounded the offences and compromised the matter and decided to live together. They are also blessed with children and petitioner has also undertaken that hereinafter himself and respondent No. 1 will reside peacefully and happily together forgetting their all differences and previous wrongs between themselves. He is also ready and willing to transfer 1 acre 20 guntas of land in Sy. No. 77 situated at Kesarahatti village and open plot near Udadagaddi in the same village in the name of respondent No. 1 and also undertakes to deposit a sum of Rs. 40,000/- in the name of respondent No. 1 for the welfare of herself and children and he would also transfer a plot standing in his name in the name of respondent No. 1 at the time of settlement before the Court in the proceedings in Criminal Miscellaneous No. 116/2012. Therefore, for the above said reasons, parties have sought for quashing of the proceedings.

4. The provision under Section 320(5) of Cr.P.C., in fact is available even to the cases where the cases are pending before the appellate Court. Section 320(5) of Cr.P.C., reads as follows:

"320(5): When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

320(6): A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.

5. Looking to the above aid provision, it is clear that if offences are

compoundable in nature with or without the permission of the Court, then irrespective of the judgment of conviction recorded and the sentence passed by the Trial Court, if any appeal is pending, the appellate Court or the High Court while exercising power under Section 401 of Cr.P.C., can permit the parties to compound the offences. But in this particular case, offences punishable under Sections 498-A and 326 of IPC are non-compoundable in nature. Therefore, strictly speaking Section 320(1) and (2) of Cr.P.C., are not applicable to permit the parties to compound the offences. In such an eventuality, this Court can exercise power under Section 482 of Cr.P.C., in order to quash the proceedings in order to enable the parties to live happily in future. It is clear from the decision reported in *Gian Singh Vs. State of Punjab and Another*, wherein, the Apex Court has held that,-

"Power of High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from power of a criminal Court of compounding offences under Section 320 of Cr.P.C. Cases where power to quash criminal proceedings may be exercised where the parties have settled their dispute, held depends on facts and circumstances of each case. Before exercise of inherent quashment power under Section 482 of Cr.P.C., High Court must have due regard to nature and gravity of the crime and its societal impact.

Thus, held, heinous and serious offences of mental depravity, murder, rape, dacoity, etc., or under special statutes like Prevention of Corruption Act or offences committed by public servants while working in their capacity as public servants, cannot be quashed even though victim or victim's family and offender have settled the dispute. Such offences are not private in nature and have a serious impact on society.

But criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing. Offences arising from commercial, financial, mercantile, civil, partnership or like transactions or offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and parties have resolved their entire dispute, High Court may quash criminal proceedings. High Court, in such cases, must consider whether it would be unfair or contrary to interest of justice to continue with the criminal proceeding or continuation of criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between parties and whether to secure ends of justice, it is appropriate the criminal case is put to an end."

6. On combined reading of Section 320(5) and (6) of Cr.P.C., with the above said decision of the Apex Court, it gives an indication that wherever the facts falls as per the directions issued by the Apex Court, even though the offences are not compoundable in nature, if really parties have compounded the offences, interest of the parties requires criminal proceedings have to be closed irrespective of the fact that offences are non-compoundable, the High Court exercising power under Section 482 of Cr.P.C., can quash such proceedings whether it is pending by way

of an appeal or revision petition or pending before the appellate Court or whether it is in the FIR stage or complaint stage. It should be borne in mind that circumstances in the matrimonial cases may change from time to time, if there had been change in the circumstances of the case, it is for the High Court to exercise its inherent power in prevailing circumstance to pass proper orders to secure the ends of justice or to prevent the abuse of process of the Court. Therefore, there is no bar to the High Court even to exercise the power under Section 482 of Cr.P.C., to quash the proceedings when the matter is pending at the appeal stage. Under the above said circumstances, coming back to the facts of this case, as I have already narrated, it is purely a matrimonial dispute between the parties and subsequent circumstances shows that parties have compounded the offences, joined together and want to live happily in future. In order to facilitate the parties, considering the wrong committed by them which is basically of private and personal in nature, the Court can definitely help the parties by closing the criminal proceedings. Therefore, I have no hesitation to quash the case pending in Criminal Appeal No. 22/2014 and consequently, quash the sentence passed by the Trial Court in C.C. No. 13/2009 on the file of the JMFC, Lingasugur.

7. However, I make it clear that whatever the undertaking given by the petitioner herein that he would make arrangements to transfer certain property and make payment in favour of the wife, should be done before entering into the compromise in the proceedings in Criminal Miscellaneous No. 116/2012 before the JMFC, Lingasugur. It should be the condition precedent that he should undertake to transfer the property as undertaken by him in the joint memo and deposit an amount of Rs. 40,000/- in favour of the wife before filing any compromise petition in Criminal Miscellaneous No. 116/2012. The learned Magistrate has to record the compromise only after complying the undertaking given by the petitioner before this Court in the joint memo and the affidavit filed herein.

8. With these observations, I pass the following:

ORDER

The petition is allowed. The proceedings pending before the Principal District and Sessions Judge, Raichur, in Criminal Appeal No. 22/2014 is hereby quashed. Consequently, the order of sentence passed by the Trial Court in C.C. No. 13/2009 is also hereby quashed.