

(2011) 08 BOM CK 0002

In the Bombay High Court

Case No : Criminal Writ Petition No. 551 of 2011

Gokul Trimbak Darade and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 323

Citation : (2011) 08 BOM CK 0002

Hon'ble Judges : Davare Shrihari P., J

Bench : Single Bench

Advocate : A.B. Girase, for the Appellant; Y.M. Kshirsagar, Assistant Public Prosecutor, for Respondent No. 1. Y.B. Bolkar, for the Respondent

Final Decision : Allowed

Judgement

Davare Shrihari P., J.—Heard learned Counsel for the parties. Learned Advocate Mr. Y.B. Bolkar has filed Vakalatnama for respondent No. 2, and also filed affidavit in reply of respondent No. 2, and same are taken on record.

2. At the request of learned Adv. Mr. Y. B. Bolkar, for respondent No. 2, leave granted to carry out amendment in paragraph 5 in the affidavit in reply filed by respondent No. 2. Amendment be carried out forthwith.

3. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, taken up for final hearing.

4. The petitioners herein have filed the present petition under Articles 226 and 227 of the Constitution of India, and also u/s 482 of the Code of Criminal Procedure, praying that the criminal proceedings initiated against the present petitioners, on the basis of C.R. No. 75/2009, registered with Bhoom Police Station, and renumbered as R.C.C. No. 225/2009, pending before learned Judicial Magistrate (First Class), Bhoom, be quashed and set aside.

5. The petitioners claim to be the residents of village Rameshwar (Taluka : Bhoom. District : Osmanabad), as well as, respondent No. 2 herein i.e. complainant is also resident of the same place, whereas respondent No. 1 is the State of Maharashtra represented through Police Inspector, Police Station. Bhoom (District: Osmanabad).

6. It is the contention of the petitioners, that on 13th July 2009, at about 8.00 p.m., at village Rameshwar, near Maruti Mandir, there was programme arranged of the local artists from Andhra Pradesh in respect of the traditional Indian culture. At about 9.00 p.m., one Trimbak Nanasaheb Nagtilak, who was under the influence of liquor, caused obstruction in the said programme, and at that time some people intervened and requested Trimbak Nagtilak not to cause obstruction. At that time, respondent No. 2 herein, namely, Bhaurao Nagtilak and one Bhimrao Nagtilak assaulted Ashruba Babasaheb Darade and Vishal Ashruba Darade. There upon, Bhimrao Nagtilak, Ankush Nagtilak, Arjun Nagtilak, Shashikant Nagtilak, Bhaurao Nagtilak, and others, abused the present petitioners on the ground of caste and assaulted the present petitioners by sticks and also threatened the present petitioners that they would lodge complaint as per provisions of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioners have also contended that the said group also taken away clothes and golden chain, and amount of Rs. 1500/- from the petitioners. Therefore, present petitioners lodged complaint against all the accused persons, and it is registered as Crime No. 76/2009, at Bhoom Police Station, under sections 143, 147, 148, 149, 323, 504, 506, read with section 395 of Indian Penal Code, and copy of the said complaint bearing Crime No. 76/2009 is annexed at Exhibit "A".

7. The petitioners have also contended that the present respondent No. 2 also approached Bhoom Police Station, alleging that some of the present petitioners assaulted him and abused him in filthy language on the ground of caste. Therefore, on the basis of complaint given by Bhaurao Kisan Nagtilak i.e. respondent No. 2 herein, Crime No. 75/ 2009 was registered against the present petitioners, for the offences punishable under sections 143, 147, 148, 149, 324, 504, 506 and 395 of Indian Penal Code, and also u/s 3(1)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Corruption Act), 1989, and copy thereof is annexed at Exhibit "B".

8. The Police personnel completed the investigation and submitted charge-sheet on 19-11-2009 before the learned Judicial Magistrate (First Class), Bhoom, and the case was registered as R.C.C. No. 225/2009.

9. According to the petitioners, Rameshwar is a small village and names of most of the petitioners who are young in age and taking education in various fields have been involved in the aforesaid complaint as accused. Hence, elder members of the family and respectable people of village Rameshwar came together and called both the parties and requested them to pacify complaints lodged by both the parties against each other, to maintain peace and harmony in the said

village. Accordingly, considering the said request and considering the larger interest of the people who are young in age, present petitioners and the complainants are ready to settle the matter and further shown their willingness for not proceeding with the said criminal complaints lodged against each other.

10. It is also contention of the petitioners, that the complaints were lodged against each other, in sudden point of time in angry manner due to which the peace and harmony in small village Rameshwar was disturbed. Hence, taking into consideration the future of young persons shown as accused in both the complaints, and considering ages of the parties, and in the interest of justice, the petitioners and complainant have approached this Court, requesting to dispose of the matter, and quash and set aside the criminal proceedings initiated on the basis of C.R. No. 75/2009, which is registered as R.C.C. No. 225/2009, which is pending before learned Judicial Magistrate (First Class), Bhoom (District: Osmanabad), under inherent powers of this Court.

11. The respondent No. 2 herein i.e. original complainant has filed affidavit in reply and submitted that Rameshwar is a small village, and there was dispute between two groups and complaints were lodged against each other. Thereafter, elder members of the family and respectable people of village Rameshwar came together and called both the parties and requested them to pacify the complaints lodged by both the parties against each other for the peace and harmony of the village. It is further stated in the affidavit, that after considering the said request and considering the larger interest of the people who are young in age, the present petitioners and the complainant are ready to settle the matter between the parties and further shown their willingness not to proceed with the criminal complaints lodged against each other.

12. The respondent No. 2 further submits that the complaints were lodged under sudden point of time in angry manner, and as such, due to complaints, peace and harmony in village Rameshwar was disturbed. Hence, taking into consideration future of the young persons shown as accused in both the complaints and considering ages of the parties, it is in the interest of justice, and facts and circumstances of the case, the parties have approached this Court, with a request to dispose of the matter and quash and set aside the criminal proceedings initiated on the basis of C.R. No. 75/2009, which is registered as R.C.C. No. 225/2009, which is pending before the learned Judicial Magistrate (First Class), Bhoom.

13. The respondent No. 2 i.e. original complainant has specifically stated that he has no complaints against the present petitioners, and he has also withdrawn his allegations in respect of section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, and therefore, he has requested this Court to quash and set aside C.R. No. 75/2009, registered with Bhoom Police Station, against the present petitioners, which is re-numbered as R.C.C. No. 225/ 2009, pending before the learned Judicial Magistrate (First Class), Bhoom.

14. The petitioners and respondent No. 2 are present before the Court, and the respondent No. 2 i.e. original complainant has specifically admitted contents in the affidavit in reply filed by him and his signature on the verification thereof. He has stated that the matter has been settled between the petitioners and him out of the Court and he does not wish to prosecute the complaint lodged by him i.e. C.R. No. 75/2009, with Bhoom Police Station, and consequent proceedings i.e. R.C.C. No. 225/2009, pending before the learned Magistrate, as aforesaid.

15. I have perused the contents of the present petition, as well as, contents of the affidavit in reply, and heard learned Counsel for the parties. It appears that the parties have settled the dispute amongst themselves out of the Court amicably, and hence, there is no propriety in continuation of C.R. No. 75/2009 and R.C.C. No. 225/2009, as respondent No. 2 herein i.e. complainant does not wish to prosecute the same furthermore. Moreover, it is also apparently clear that continuation of the proceedings in R.C.C. No. 225/2009 before the learned Judicial Magistrate (First Class), Bhoom, on the basis of C.R. NO. 75/2009, would be a futile exercise, since respondent No. 2 i.e. original complainant does not wish to prosecute the same furthermore, as dispute has been resolved between parties out of the Court.

16. Learned Single Judge of this Court, in the case of (Anjusingh Pramodsingh Rajput Vs. State of Maharashtra & another)¹, reported at 2010(2) Bom.C.R.(Cri.) 229(A.B.) : 2009 All. M.R.(Cri.) 763, relying on the judgment of Hon. Apex Court, in the case of (B.S. Joshi and others Vs. State of Harayana and another)² reported at 2004(1) Bom.C.R.(Cri.) 93(S.C: 2003 All. M.R.(Cri.) 1162.), has observed thus :

21. Hon"ble Supreme Court in the case of B.S. Joshi and others Vs. State of Harayana and another, reported in 2004(1) Bom.C.R(Cri)93(S.C.): 2003 All. M.R. (Cri.) 1162 held as under :-

Criminal P.C., sections 482 and 320 - Inherent powers - Quashing of proceedings, F.I.R. or complaint - section 320 would not be a bar to exercise of power of quashing -Whether to exercise or not such a power would depend upon facts and circumstances of each case.

Criminal P.C. section 482 - Powers of Court -Matrimonial offences - It is the duty of the Court to encourage genuine settlements of matrimonial disputes.

In another case of (Mansur A. Khan Vs. State of Maharashtra and others)³, reported in 2004(Supp. 2) Bom.C.R. 693 : 2004 All.M.R.(Cri.) 1911, this Court held as under:-

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act (1989), section 3(1)(x) - Criminal P.C. sections 482 and 320 - Compounding of offences - Inherent powers of Court - Complaint u/s 3(1)(x) of Atrocities Act - Settlement between accused and complainant - Offence though non-compound able, Court u/ s 482 of Criminal Procedure Code can permit the parties to compound the non-

compoundable offence, when it is satisfied that settlement is bona fide and free from pressure and force.

In another case of (Swati w/o. Pradeep Goswami Vs. State of Maharashtra and others)⁴, reported in 2006 All. M.R.(Cri.) 1743 this Court held that :-

Criminal P.C., sections 482, 320 - Penal Code, sections 498A, 420, 494, 495 and section 506 (B) - Amicable settlement of disputes between the parties - No purpose would be served in continuing the proceedings initiated by the wife when she herself is not interested in prosecuting the said proceedings - Criminal Proceedings quashed.

This Court in the case of (Mr. Jitendra S. Bhadoria and others Vs. State of Maharashtra and another)⁵, reported in 2009(1) Bom.C.R.(Cri.) 688 : 2008 All.M.R.(Cri.) 898 held as under:-

Criminal P.C., Ss. 320, 482 - Quashing of Proceedings - Compounding of offence u/s 320 - Cruelty to wife - section 320 of Criminal P.C. does not limit or affect the power of the High Court u/s 482 of Cr.P.C. - section 320 would not be a bar to exercise a power of quashing. Penal Code (1860), section 498A, 2003 ALL MR (Cri) 1162 (S.C.) - relied on.

22. The full Bench of this Court in the case of (Abasaheb Yadav Honmane Vs. The State of Maharashtra and another)⁶, reported in 2008(1) Bom.C.R.(Cri.) 584(F.B.) : [2008 All.M.R. (Cri.) 952 (F.B.)] held that the powers u/s 482 of the Code are not limited or affected by the provisions of section 320 of the Code. It is further held that the inherent powers u/s 482 of the Code include powers to quash F.I.R., investigation or any criminal proceedings pending before the High Court or any courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any Court and to make such orders as may be necessary to give effect to any order under this Code, pending upon the facts of a given case. The powers u/s 482 are neither limited nor curtailed by any other provisions of the Code including section 320 of the Code. The Court could exercise this power in offences of any kind whether compoundable or non-compoundable. However, such inherent powers are to be exercised sparingly and with caution and in conformity with the precepts indicated in paragraph 7.10 of this judgment. This Court further observed that the powers to compound can be exercised at the trial stage or even at the appellate stage subject to satisfaction of the conditions postulated by the legislature u/s 320 of the Code.

The Full Bench in above referred judgment in para 6.13 has observed that the powers of compounding is strictly regulated by statutory powers while the inherent powers of the Court are guided by judicial pronouncements within the scope of section 482 of the Code. Another very important facet of criminal jurisprudence which has developed in the present time is with regard to the impact of compounding and/or quashing criminal proceedings in relation to an offence, its impact on the victim, witnesses and the society at large. This must

be treated as a relevant consideration.

In above referred judgment, in para No. 5.14 the Full Bench has observed that when the Court has to consider whether the criminal Proceedings should be allowed to continue or the same should be quashed, two aspects are to be satisfied (i) whether the uncontroverted allegations, as made in the complaint; prima facie establish the offence, and (ii) whether it is expedient and in the interest of justice to permit a prosecution to continue

17. The Hon. Apex Court, in the case of (Dr. Arvind Barsaul, etc. Vs. State of Madhya Pradesh & another)⁷, reported at 2008 B.C.I. 55(S.C.) : 2008 Ail. S.C.R. 2111, in para 10 of the judgment, has observed thus;

We have heard learned Counsel for the parties at length. The parties have compromised and the complainant Smt. Sadhna Madnawat categorically submitted that she does not want to prosecute the appellants. Even otherwise also, in the peculiar facts and circumstances of the case and in the interest of justice, in our opinion, continuation of criminal proceedings would be an abuse of the process of law. We, in exercise of our power under Article 142 of the Constitution, deem it proper to quash the criminal proceedings pending against the appellants emanating from the FIR lodged u/s 498A, IPC. The appeal is accordingly disposed of.

18. In view of the pronouncement by the Full Bench of this Court, relying on the various Supreme Court's judgments, I have no hesitation to proceed on footings that the inherent powers u/s 482 of the Criminal Procedure Code include the powers to quash F.I.R., investigation or any criminal proceedings pending before the High Court or any courts subordinate to it.

19. Hence, considering the facts and circumstances, it is necessary to invoke inherent powers of this Court, u/s 482 of the Code of Criminal Procedure, and Article 227 of the Constitution of India, to quash and set aside the C.R. No. 75/2009 and R.C.C. No. 225/ 2009, to meet the ends of justice, and to maintain peace and harmony in the village, namely, Rameshwar, and relying upon above referred judicial pronouncements.

20. In the result, present petition is allowed in terms of prayer clause "B" thereof, and C.R. No. 75/2009, registered with Bhoom Police Station, and renumbered as R.C.C. No. 225/2009, pending before the learned Judicial Magistrate (First Class), Bhoom, stand quashed and set aside, subject to payment of costs of Rs. 2000/- by the petitioners and Rs. 2000/- by respondent No. 2, to the High Court Legal Services Sub-Committee at Aurangabad, within four weeks.

21. Rule is made absolute accordingly. Office to inform the concerned Court in that respect.