
(2022) 07 CHH CK 0014

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1828 Of 2017

Ishwar Bhai Salat

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406

Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2022) 07 CHH CK 0014

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : K. Rohan, Lalit Jangde, Shreyansh Mehta

Final Decision : Allowed

Judgement

Heard.

1. The instant petition has been filed for quashment of an FIR bearing No.0423 dated 08.10.2017(Annexure A-1) registered under Section 406 read with Section 34 of IPC against the petitioners before the Police Station Pulgaon, District Durg, C.G.

2. Brief facts of this case are that a complaint was made by respondent No.2 Anup Agrawal that certain machinery was supplied to him by the petitioners which was to be used for construction of the road and the advance was received. There has been certain transactions took place and though the machinery was returned but the amount was withheld by the petitioners. Thereby committed breach of trust.

3. Learned counsel for the petitioners submits that the entire transaction was of commercial nature and it was settled between the parties that the advance which is held would be adjusted in the future dealing and subsequently the compromise has been arrived at in between the parties, which would be evident from the statement made, therefore, the FIR lodged against the petitioners may be

quashed.

4. Learned counsel for respondent No.2 would submit that the compromise has been effected and it being a commercial transaction the complainant also do not want to further prosecute the FIR.

5. I have heard learned counsel for the parties and perused the record.

6. The record would show that the statement of Anup Agrawal was recorded on 09.03.2022 wherein he stated that without any pressure, undue influence or coercion he has entered into the compromise and do not want to further prosecute the FIR registered under Section 406 read with Section 34 of IPC against the petitioners.

7. With respect to compounding the offence, Hon'ble the Supreme Court in *Gian Singh v. State of Punjab & Another* (2012) 10 SCC 303 has laid down the following principles :

"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 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 predominately civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

8. Further, in case of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & ors. V. State of Gujarat & ors. {(2017) 9 SCC 641} their Lordship again reiterated the view taken in case of Gian Singh (supra) and has laid down the following propositions :

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

(i) 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 inhere in the High Court;

(ii) 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.

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) 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."

9. Considering the submission of the complainant respondent No.2 and the nature of transaction, primarily it appears that it was a commercial transaction for supply of goods and the compromise has been arrived at in between the parties and no purpose would be served to continue the FIR. Under the circumstances, following the principles laid down by the Supreme Court as cited above; and the submission of the parties, I am inclined to quash the FIR against the petitioners.

10. In the result the petition is allowed. The proceedings of FIR dated 08.10.2017 (Annexure A-1) registered under Section 406 read with Section 34 of IPC against the petitioners before the Police Station Pulgaon, District Durg, C.G. is hereby quashed. The petitioners are acquitted of the charges leveled against them.