

(2014) 12 BOM CK 0055

In the Bombay High Court

Case No : Criminal Application No. 5357 of 2014

Jagannath

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 320, 323, 324, 326

Citation : (2016) ALLMR(Cri) 788 : (2015) 1 BomCR(Cri) 787

Hon'ble Judges : S.S. Shinde, J; A.I.S. Cheema, J

Bench : Division Bench

Advocate : Rajendra G. Hange, Advocate for the Appellant; S.G. Karlekar, APP and N.R. Thorat, Advocate for the Respondent

Judgement

S.S. Shinde, J.—Heard learned Counsel for the parties.

2. Rule. Rule made returnable forthwith and heard finally.

3. This application is filed for quashing the proceedings bearing RCC No. 40 of 2014, pending before the learned Judicial Magistrate First Class, Washi, pursuant to Crime No. 05 of 2011, registered with Washi Police Station, District Osmanabad, for the offence punishable under sections 326, 324, 323, 504 and 506 read with Section 34 of the I.P. Code, and the Crime bearing Crime No. 05 of 2011 registered with Washi Police Station.

4. The learned counsel appearing for the respondent No. 2 has filed affidavit-in-reply, paragraphs 2 and 2 (sic) of which read, thus:

"1] I further say and submit that applicant No. 1 is my nephew whereas applicant No. 2 is his wife. They are close and blood related to me, so there is no grudge against them.

2] I say and submit that now the matter is amicably settled / compromised between me and the applicants. I and the applicants are inhabitant of village Shendi, Ta. Washi District Osmanabad. We are having no enmity with each other.

Due to trifle incident alleged offence took place. For maintaining good relations in future, we have decided to compromise the matter. I am having no objection to quash proceedings bearing RCC No. 40 of 2014 pending before Judicial Magistrate F.C. Washi pursuant to Crime No. 05 of 2011 registered with Washi Police Station, District Osmanabad for the offence punishable under Sections 326, 324, 323, 504 and 506 read with section 34 of the Indian penal Code and the crime bearing Crime No. 05 of 2011 registered with Washi Police Station, may kindly be quashed and set aside."

5. Further affidavits filed by the applicant Nos. 1 and 2 are in continuation of the averments in the Criminal Application for quashing of First Information Report. Paragraph Nos. 2 and 3 of the affidavit filed by the applicant No. 1, read thus:

"2] I further say and submit that respondent No. 2 informant is uncle whereas applicant No. 2 is my wife. We all are close and blood related to each other. Now, the matter is amicably settled / compromised between us.

3] I hereby undertake that I will not commit similar offence in future. Hence, to quash proceedings bearing RCC No. 40 of 2014 pending before the Judicial Magistrate F.C. Washi pursuant to Crime No. 05 of 2011 registered with Washi Police Station, District Osmanabad for the offence punishable under sections 326, 324, 323 504 and 506 read with section 34 of the Indian Penal Code and also the FIR in Crime No. 05 of 2011 registered with Washi Police Station."

Paragraph Nos. 2 and 3 of the affidavit filed by the applicant No. 2, read thus:

"2] I further say and submit that respondent No. 2 informant is uncle of my husband [i.e. father-in-law of mine] whereas applicant No. 1 is my husband. We all are close and blood related to each other. Now, the matter is amicably settled / compromised between us.

3] I hereby undertake that I will not commit similar offence in future. Hence, to quash proceedings bearing RCC No. 40 of 2014 pending before the Judicial Magistrate F.C. Washi pursuant to Crime No. 05 of 2011 registered with Washi Police Station, District Osmanabad for the offence punishable under sections 326, 324, 323 504 and 506 read with section 34 of the Indian Penal Code and also the FIR in Crime No. 05 of 2011 registered with Washi Police Station."

6. The applicants and the respondent No. 2 are present before this Court, and identified by the respective Advocate appearing for them. On interacting with the applicants, they stated that, henceforth they will not indulge in similar activities. The respondent No. 2 i.e. original complainant has also stated that, he has agreed for compromise voluntarily without any coercion or pressure by the applicants.

7. Upon conjoint reading of the affidavit-in-reply filed by the respondent No. 2, averments in the application and further affidavits filed by the applicant Nos. 1 and 2, it appears that, the complainant is uncle of the applicant No. 1. Applicant No. 2 is the wife of the applicant No. 1. They are close relatives. It further

appears that, due to trifling incident alleged offence had taken place. The parties have decided to maintain good relations and harmony in future. Upon careful reading of the affidavit in reply filed by the respondent No. 2, averments in the application and further affidavits filed by the applicants, it appears that, the dispute between the parties appears to be private in nature.

8. The Hon'ble Supreme Court in the case of *Gian Singh Vs. State of Punjab and Another*, observed, thus:

"61...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 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 befittingly 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 predominately 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 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."

Yet in another Judgment, the Hon"ble Supreme Court in the case of Narinder Singh & others Vs. State of Punjab & another 2014 AIR SCW 2065 in para No. 31 observed, thus:

"31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) 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.

(II) 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.

(III) Such a power is not 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.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the

society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(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. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

9. In the light of averments in the affidavit filed by the respondent No. 2 and looking to the nature of the controversy, in our opinion, settlement deserves to be accepted.

10. No fruitful purpose would be served by continuing the further proceedings

based upon the First Information Report bearing Crime No. 05 of 2011 registered with Washi Police Station, District Osmanabad, for the offences punishable under Sections 326, 324, 323, 504 and 506 read with Section 34 of the I.P. Code, since complainant is not going to support the allegations in the First Information Report. The further continuation of the proceedings would be wastage of time and abuse of process of Court.

11. In that view of the matter, the application is allowed in terms of prayer clause-B and same stands disposed of. Rule made absolute in above terms.