
(2020) 01 MP CK 0120

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 53989 Of 2019

Jagdish Valecha And Anr

APPELLANT

Vs

State Of M.P. And Anr

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320(1), 320(2), 482
Indian Penal Code, 1860 — Section 34, 294, 406, 420, 506

Citation : (2020) 01 MP CK 0120

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Yash Sharma, R.K. Upadhyay

Final Decision : Dismissed

Judgement

This application under Section 482 of Cr.P.C. has been filed for quashment of the FIR in Crime No. 155/2016 registered by Police Station

Maharajpura District Gwalior for offence under Sections 420, 406, 506, 294 and 34 of IPC.

The brief facts leading to the filing of this petition as disclosed in the F.I.R are as under:-

On 5.5.2016, complainant Yatendra Singh Chauhan, who is respondent no.5 herein, lodged the written complaint with police station Maharajpura

Gwalior stating that he is the owner of the M/s Yatendra Chauhan Contractors and Suppliers. Petitioner Jagdish Valecha and his brother Dinesh

Valecha are the Directors of the Valecha Engineering Pvt. Ltd Co. (for short as the company). Kapil Valecha and Karan Valecha are the sons of

the petitioner. M.H.Mehta is the General Manager of the company. On 10.10.2014, on behalf of the company, M.H.Mehta had entered into a written

agreement with him in his residence at DH 89 DD Nagar Gwalior. According to the agreement, he had to supply 2,50,000/- metric tons of crushed stones aggregate at the work site of the company as it has got the contract of construction of four lane road of Etawah-Mainpuri Purawali at that time. As per the agreement, he supplied crushed stones worth Rs.68,00,000/- (sixty eight lac) during the period from November-December 2014 and January 2015. The company paid him only 10,00,000/- (ten lac) rupees against the aforesaid amount. The company gave him two cheques bearing Nos.69999 and 993058. Both the cheques were dishonored by the drawee bank of the company. The directors and the employees of the company fled away from the work site. One Navin Bajaj also lodged an FIR at Police Station Jhansi Road Gwalior for the similar type of the offences having been committed by them. In that case, the police arrested Dinesh Valecha from Mumbai. When he was being brought to Gwalior, he escaped from the custody of the police at Railway-Station Bina. Now, the aforesaid persons would hurl at him various kinds of filthy abuses and would give him death threats on phones. Upon the complaint, Police Mahajarajpura Gwalior registered the FIR at Crime No.155 of 2016 and have made the petitioner, Dinesh Valecha, Kapil Valecha and Karan Valecha the accused persons of the case for committing the offences punishable under Sections 420, 406, 506, 294 and 34 I.P.C.

It is not out of place to mention here that earlier the applicant had filed a petition under Section 482 of Cr.P.C. for quashment of FIR which was registered as M.Cr.C. No. 9082/2016. The said application was dismissed by this Court on merits by a detailed order dated 04.01.2018. Now the present application has been filed on the ground that the parties have compromised the matter. It is submitted by the counsel for the applicant that since the parties have resolved their disputes, therefore, they have entered into a compromise by executing a memorandum of understanding on 06.12.2019 (Annexure P-5) and accordingly, it is clear that all the disputes between the parties have been resolved and thus, the FIR registered against the applicant be quashed. It is further submitted that since the present application has been filed on the ground of compromise, therefore, the second application under Section 482 of Cr.P.C. is maintainable even after the dismissal of the first application on merits.

Heard the learned counsel for the applicants.

According to the applicants, the offence under Sections 420, 406, 506, 294, 34 of IPC has been registered against the applicants. It is submitted that

the offence under Sections 406, 420 of IPC are compoundable under Section 320(2) of Cr.P.C., whereas the offence under Section 506 of IPC is

compoundable under Section 320(1) of Cr.P.C., therefore, this application can be entertained by this Court.

Section 320(1) and (2) of Cr.P.C. reads as under:-

320. Compounding of offences: (1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the

Table next following may be compounded by the persons mentioned in the third column of that Table.

(2) The offences punishable under the sections of the Indian Penal (45 of 1860) Code specified in the first two columns of the Table next following

may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third

column of that Table:

On the plain reading of this section, it is clear that the offences mentioned in first two column of the table can be compounded with the permission of

the Court before which any prosecution for such offence is pending. Admittedly, the police has not filed charge-sheet so far. No prosecution of the

offence registered against the applicants is pending before this Court.

Thus, this Court is of the considered opinion that as the application filed under Section 320(2) of Cr.P.C. for quashment of the FIR on the basis of

compromise in respect of compoundable offence is not maintainable before this Court as no prosecution is pending before this Court.

It is next contended by the counsel for the applicants that this Court in exercise of power under Section 482 of Cr.P.C. can quash the proceedings as

held by the Supreme Court in the cases of Gian Singh vs. State of Punjab reported in (2012) 10 SCC 303 and Narinder Singh and others Vs. State of

Punjab reported in (2014) 6 SCC 466 Considered the submissions made by the counsel for the applicants.

Section 482 of Cr.P.C. reads as under:-

482. Saving of inherent powers of High Court -- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to

make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.â??

It is true that in order to do complete justice, this Court can exercise its inherent powers under Section 482 of Cr.P.C. However, when there are specific provision of Section 320(2) of Cr.P.C. to deal with such a situation, this Court is of the considered opinion that no good ground has been made by the counsel for the applicants for exercise of power under Section 482 of Cr.P.C. specifically when the case is covered by specific provisions of the Code.

The Supreme Court in the case of Arun Shankar Shukla Vs. State of U.P. and others reported in (1999) 6 SCC 146 has held as under:-

â??2. It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short the Codeâ?) has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by the so-called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions â??abuse of the process of lawâ? or â??to secure the ends of justiceâ? do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well- nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial.â??

Further, Section 482 of Cr.P.C. does not confer any new power to the High Court

but it only saves the inherent powers. Jurisdiction under Section 482

of Cr.P.C. is not an unlimited jurisdiction and the power has to be exercised sparingly, carefully and with caution and only where such exercise is

justified by the tests laid down in the Section 482 of Cr.P.C. itself.

The Supreme Court in the case of Divine Retreat Centre v. State of Kerala and others reported in (2008) 3 SCC 542 has held as under:-

“27. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to

be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that

Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of

the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

28. Chandrachud, J. (as His Lordship then was), in Kurukshetra University v. State of Haryana while considering the nature of jurisdiction conferred

upon the High Court under Section 482 of the Code observed: (SCC p. 451, para 2)

“2. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.

That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

Furthermore, the present application is not supported by affidavit of the complainant. Thus, there is nothing on record to suggest that whether any

compromise has actually taken place between the parties or not.

Accordingly, this Court is of the considered opinion that there is no substance in the present application, as a result of which, the application fails and is

hereby dismissed.