
(2010) 07 AHC CK 0499

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 137 of 2009

Jitendra Pal alias Pappu and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321, 482

Hindu Marriage Act, 1955 — Section 13

Penal Code, 1860 (IPC) — Section 307, 323, 324, 392, 498A

Citation : (2011) 6 RCR(Criminal) 1166

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—A quadruple close relatives applicants Jitendra Pal Singh alias Pappu (A-1) Tavindar Singh (A-2), Seva Singh (A-3) and Smt. Satnam Kaur (A-4) have invoked inherent jurisdiction of this Court with the prayer that proceeding of Criminal Case No. 2381 of 2008, State v. Jitendra Pal Singh, under Sections 307/392/504/506, I.P.C., pending before Special Chief Metropolitan Magistrate, Kanpur Nagar be quashed. Their subsidiary prayer is for stay of the aforesaid proceedings pendente lite this Application in this Court.

2. Briefly stated background facts are that one Jyoti Deep Kaur alias Ruchi and Seva Singh (A-3) are sibling Brother. and sister and Satnam Kaur (A-4) is their mOrs.. Jitendra Pal Singh alias Pappu (A-1) is Brother.-in-law of A-3 and Tavindar Singh (A-2) is his Anr. Brother.-in-law (Sister's husband/Bahnoi) of A-3. Jyoti Deep Kaur is the daughter-in-law of Respondent No. 2 Darshan Singh being wife of his son Manmeet Singh. Thus all the applicants and Respondent No. 2 stand in close relationship with each Ors.. It seems that a dispute arose between Jyoti Deep Kaur and her husband Manmeet Singh. Motivated because of the dispute on 31.10.2007 at 5.30 a.m., Respondent No. 2 accompanied with his son Gurdeep Singh was proceeding towards chowk Gurudwara on a scooter and when

they reached hospital road then applicants, who were armed with fire arms, blocked their way by their Maruti car and forced them to have a conversation with them. Respondent No. 2 forbade by telling them that after his return from Gurudwara that the conversation will take place. A-1 and A-3 started intimidating and at the instigation of A-4 both of them shot at Respondent No. 2. Fire made by A-1 caused injury in the arm of Respondent No. 2 but shot fired by A-1 went in air. A-2 snatched the bag from Respondent No. 2 containing Rs. Two thousand five hundred and some important documents. Accused thereafter escaped from the spot hurling abuses and intimidating. Since F.I.R. of Respondent No. 2 was not registered, therefore, he invoked the power of Magistrate u/s 156(3), Cr. P.C. by moving an application seeking his direction for the police to register his F.I.R. It transpires that under the order of the Court that F.I.R. (Annexure-1) of Respondent No. 2 being Crime No. 512 of 2007 u/s 307/392/504/506, I.P.C. was registered at P.S. Kotwali District Kanpur Nagar. Investigation into the crime finally resulted in submission of a F.R. vide Annexure-2 on 4.2.2008. Respondent No. 2 consequently laid a protest petition. Special C.J.M., Kanpur Nagar vide his order dated 14.7.2008 allowed the protest petition, rejected the F.R. and summoned all the applicants u/s 307/392/504/506, I.P.C. by registering Criminal Case No. 2381 of 2008 against the applicants. Perusal of the record further reveals that interregnum, both the contesting sides reached an accord on 21.8.2008 vide Annexure-4 to this Application, which contains signature of all the applicants and Respondent No. 2. Though this accord was inked on 11.8.2008 but the same was got verified on 21.8.2008. A compromise between the couple was also arrived at vide Annexure-7 to this Application which was also got verified on 9.1.2008. On the basis of the said compromise proceeding of Criminal Case No. 293 of 2008, u/s 323/504/506/498A, I.P.C. instituted against the son of Respondent No. 2 and Ors.s by the wife Jyoti Deep Kaur, was quashed by this Court in Criminal Misc. Application No. 1959 of 2008, Manmit Singh alias Prince and Ors. v. State of U.P. and Anr., on 15.5.2008 vide Annexure-8 to this application. Under the terms of the agreement even the marriage between the spouses stood dissolved by a decree of divorce by mutual consent u/s 13(b) of Hindu Marriage Act, by Additional Principal Judge, Family Court, Kanpur Nagar, on 7.7.2008 vide Annexure-9 to this Application.

3. It was in the backdrop of preceding facts that the applicants have filed instant Criminal Misc Application invoking inherent power of this Court to get their prosecution also quashed as some of the offences against them are not compoundable and both the parties do not want to go through the arduous criminal trial procedure.

4. At the time of admission itself Sri Sanjiv Pandey advocate appeared for Respondent No. 2 informant and both counsel for the applicants and Sri Pandey in one voice harangued the same submission that the proceeding be quashed looking to the relationship between the parties and the agreement arrived at between them. They submitted that from the facts no offence u/s 307, I.P.C. is made out and the offence will not travel outside the purview of Section 324,

I.P.C. and so far as offence of robbery is concerned the same is also not made out because there was no intention to commit theft by the accused. Snatching was an individual act of one of the accused and since parties have come to terms they should be allowed to live their own lives. It was submitted that in fact the dispute was in the nature of a family feud and the reasoning of Apex Court in the case of B.S. Joshi and Others Vs. State of Haryana and Another, be imported to apply in the instant case and prosecution be quashed. It was further submitted that the prosecution of the Ors. side already stood quashed and, therefore, no useful purpose will be served to allow the trial to proceed as that will amount to only wastage of time of the Court without yielding any fruitful result. It was next submitted that divorce has already taken place and both the spouses are living their own lives separately and, therefore, parties should not be compelled to litigate against their own wishes especially when the Ors. side is reaping the benefit of closer of their trial. They concluded that to save the precious time of the Court and harassment of the litigating parties prosecution of the applicants be quashed as trial will only increase bickering between the parties which will not be in consonance with interest of justice.

5. I have considered the argument of the both the sides. Looking to the entire facts and circumstances of the case I am inclined to lean in favour of quashing the prosecution for the reasons which were argued before me by both the contesting sides. Allowing such a prosecution to go on between one time close relatives will only add to discord rather than settle the dispute for which the courts exists. For exercise of power by this Court on such facts u/s 482, Cr. P.C., Section 321 of the Code will not be an impediment as this Court must exercise inherent power u/s 482, Cr. P.C. ex debito justice to do complete real and substantial justice. Interest of justice also demands that if the parties have come to a settlement and wishes to finish off the case they should be allowed to do so to foster justice when they were close relatives and the nature of dispute was that of a family feud. It will be colossal wastage of time of the Court to allow a litigation to proceed when it's outcome is predetermined.

6. It has been held by the Apex Court in Rahul Agarwal Vs. Rakesh Jain and Another, as follows:

10. From these decisions as well as Ors. decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the Court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the Court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest or justice, the Court may allow the withdrawal of prosecution.

7. In *Manoj and Another Vs. State of Madhya Pradesh*, , it has been held by the Apex Court as follows:

14. The Appellants and the complainant are residents of the same village and with the intervention of the village panchayat the complainant has compounded the offence with the Appellants and now he has no grievance against them. The Appellants and the complainant have categorically stated in their affidavits filed before us that after the incident they have developed family relations and they wish to reside peacefully in the village in future without any kind of disruption in their future lives.

15. We are satisfied that the complainant has voluntarily desired to compound the offence with the Appellants for sufficient and genuine reasons stated in their respective affidavits and such compounding is legal and valid. We allow the parties to compound the offence u/s 324, I.P.C. Criminal Miscellaneous Petition No. 4257/2008 stands, accordingly, allowed. In view of the compounding, the conviction and sentence is set aside. The Appellants, who are in jail undergoing sentence, shall be set free forthwith, if not required in any Ors. case. The appeal is disposed of accordingly.

8. In *Madan Mohan Abbot Vs. State of Punjab*, it has been held by the Apex Court as follows:

5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the F.I.R. and the Ors. documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January, 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law. We see from the impugned order that the learned Judge has confused a compounding of an offence with the quashing of proceedings. The outer limit of Rs. 250 which has led to the dismissal of the application is an irrelevant factor in the later case. We accordingly allow the appeal and in the peculiar facts of the case, direct that F.I.R. No. 155, dated 17th November, 2001 P.S. Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed.

9. Thus, in view of above and concluding this judgment, I allow this Criminal Misc. Application and quash prosecution of Criminal Case No. 2381 of 2008 u/s 307/392/504/506, I.P.C. pending before Special C.M.M., Kanpur Nagar.