

(2016) 01 KAR CK 0046
In the Karnataka High Court
Case No : Crl. P. No. 101293/2015

Madhav and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, Section 482
Penal Code, 1860 (IPC) — Section 307, Section 324, Section 326, Section 34, Section 354, Section 504, Section 506

Citation : (2016) 01 KAR CK 0046

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Dinesh M. Kulkarni, Advocate, for the Appellant; Raja Raghavendra Naik, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Satyanarayana, J.—1. Accused Nos. 1 and 2 in C.C. No. 1191/2014 on the file of the I Additional JMFC, Sirsi have come up in this petition seeking quashing of the aforesaid proceedings.

2. The genesis of this litigation is with reference to the family dispute between respondent No. 2 and petitioner No. 1 who are admittedly sons of one Durga Moger. Petitioner No. 2 is the daughter of petitioner No. 1 and niece of respondent No. 2. The material available on record would disclose that there was a dispute between petitioner No. 1-Madhav who is the elder brother of respondent No. 2-Krishna with reference to certain family matters, wherein it is seen that abuses are hurled against each other and in the process, petitioner No. 2 who is the daughter of petitioner No. 1 has joined hand in support of her father which has resulted in an altercation between the family members within the premises of their family resulting in two complaints being lodged by them against each other on 01.08.2014. The first of the complaint by petitioner No. 1-Madhav which is registered in crime No. 74/2014 is for the offences punishable under

Sections 354, 504, 506 read with Section 34 of IPC. On the very same day, counter complaint is lodged by respondent No. 2-Krishna, which is registered in crime No. 75/2014 for the offences punishable under Sections 324, 504, 506 read with Section 34 of IPC. Both the complaints are registered with Sirsi Town Police who subsequently filed charge sheets in Charge Sheet No. 46/2014 in crime No. 74/2014 and Charge Sheet No. 47/2014 in crime No. 75/2014. Both the charge sheets are filed on the same day, i.e., on 27.08.2014 for the aforesaid offences. Both the charge sheets are registered as criminal complaints; C.C. No. 1189/2014 is against Krishna and C.C. No. 1191/2014 is against petitioner Nos. 1 and 2 showing them as accused Nos. 1 and 2.

3. When the matter stood thus, since the dispute was between the members of the same family, more particularly between two brothers and daughter of one of them, other family members and close relatives mediated among the rival parties and brought about a settlement, which is reduced into compromise petition. In the meanwhile, accused Nos. 1 and 2 in C.C. No. 1191/2014 had already filed the present petition seeking quashing of the proceedings in C.C. No. 1191/2014.

4. The learned counsel Sri. Dinesh M. Kulkarni appearing for the petitioners and learned counsel Sri. Narayan V. Yaji appearing for respondent No. 2 together filed a compromise petition, which is signed by petitioner Nos. 1 and 2 and respondent No. 2 who are present before the Court. The signature of the parties is identified by their respective counsel. The compromise petition is taken on record. In this petition though quashing is sought only in respect of proceedings in C.C. No. 1191/2014, but in the compromise petition, it is jointly submitted by accused in C.C. No. 1189/2014 and as well as petitioner Nos. 1 and 2 in C.C. No. 1191/2014 that they are seeking quashing of both the proceedings.

5. Admittedly, the proceedings initiated in crime No. 74/2014 which is registered in C.C. No. 1189/2014 is for the offences punishable under Sections 354, 504, 506 read with Section 34 of IPC, whereas, the proceedings which was commenced with crime No. 75/2014 culminated in C.C. No. 1191/2014 is for the offences punishable under Sections 324, 504 read with Section 34 of IPC. With this, what is seen in both the proceedings, one of the offence is non-compoundable offence as enunciated under Section 320 of Cr.P.C. Therefore, even if compromise petition filed by them is received by this Court, the proceedings cannot be dropped so far as offence alleged under Section 354 of IPC against respondent No. 2 and the offence alleged under Section 324 against petitioner Nos. 1 and 2.

6. In that view of the matter, counsel appearing for petitioner Nos. 1 and 2 and respondent No. 2 would submit before this Court that, in such circumstances, the Apex Court has taken a liberal view in holding that, if the dispute is between the family members and if the same is with reference to the offences which are not severe in nature, like, dacoity, rape, murder or attempt to murder, the same will have to be viewed from the point of societal interest. Though the provisions under Section 320 of Cr.P.C. does not provide for compound, the High Court in

exercise of its power under Section 482 of Cr.P.C. can take lenient view and consider quashing of the proceedings in the general interest of the society and as well as to maintain the harmony between the members of the same family and to ensure that enmity between family members does not go beyond the limit where they would become permanent enemies forever.

7. To strengthen their submission, they relied upon the judgment rendered by the Apex Court in the matter of *Gian Singh V. State of Punjab* reported in , (2012) 4 SCC (Civ) 1188, which is followed by the Apex Court in the matter of *Yogendra Yadav and Others v. State of Jharkhand and Another* reported in , (2014) 9 Supreme Court Cases 653. In both the matters the point for consideration before the Apex Court is, the power of High Court in quashing the proceedings which are noncompoundable in nature and quashing the same on the basis of a compromise entered into between the parties pursuant to the settlement arrived at by them. In fact in the judgment rendered in *Yogendra Yadav's* case, the relevant portion is at paragraph No. 4, wherein the Apex Court while arriving at such conclusion, relied upon the judgment rendered in the earlier matter disposed of by the Apex Court in the matter of *Gian Singh's*, wherein, the relevant portion of the judgment which is at 58 is culled out and referred to in paragraph 5 of the said judgment, which are reproduced as under:

"4. Now, the question before this Court is whether this Court can compound the offences under Section 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab*). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like, rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. However, when High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about the peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In *Gian Singh*- this Court has observed that:

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled

although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor."

8. On going through the observations made by the Apex Court while considering the prayer of the parties for acceptance of settlement arrived at between them and also by setting aside the finding of the High Court in granting the relief as prayed for apply to the facts and circumstances of the case on hand in all fours. In that view of the matter, by relying upon the judgment rendered by the Apex Court in the aforesaid two matters, the compromise arrived at between petitioner Nos. 1 and 2 and respondent No. 2 in this matter is accepted and the proceedings initiated against them in C.C. Nos. 1189 and 1191 of 2014 on the file of the Principal Civil Judge and I Additional JMFC, Sirsi are hereby quashed.