

(2004) 07 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8655 of 2004

Maninder Singh and another

APPELLANT

Vs

Union Territory Chandigarh and others

RESPONDENT

Date of Decision : 19-07-2004

Acts Referred:

Citation : (2004) 3 CCC 115 : (2004) 4 RCR(Criminal) 420

Hon'ble Judges : S.S.Saron, J

Advocate : Shri Vikram Choudhary and Sh. J.S. Gill, Advocates. Shri D.P. Gill, Advocate for Shri Ajai Lamba, Standing Counsel. For the Respondent Nos. 2 and 3, Shri Rajiv Trikha, Advocate., Advocates for appearing Parties

Judgement

S.S. Saron, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) for quashing the case FIR No. 49 dated 8.3.1999 (Annexure P.1) registered at Police Station South, Sector 34, Chandigarh for the offences under Sections 451, 448 and 380 of the Indian Penal Code ('IPC' for short) on the basis of compromise reached at between the petitioners and respondent Nos. 2 and 3.

2. Petitioner No. 1 and respondent No. 2 are real brothers. Petitioner No. 2 is the wife of petitioner No. 1 and respondent No. 3 is the wife of respondent No. 2. On the basis of a complaint made by respondent No. 2, the aforesaid FIR was registered against the petitioners. As per allegations in the FIR dated 8.3.1999 (Annexure P1), it is alleged by the complainant (respondent No. 2) that he is owner of house No. 3002, Sector 32D, Chandigarh. He is a non resident Indian settled in USA and visits Chandigarh regularly with his family. It is alleged that during his visits he stays for about one month and his wife and son for about fourfive months in the said house. On 19.12.1998, they came to Chandigarh, after a brief stay of the complainant (respondent No. 2) at the house of his inlaws, they went to the house on 24.12.1998 with his fatherinlaw and family friends. Upon their arrival in the house, they found that the living arrangements

as described in DDR No. 58 dated 6.5.1998 (copy attached) had been disturbed. The room which was in their exclusive possession on the first floor, which was left locked, had been broken into through the cooler window. Cooler's grill had been disturbed and the latches were missing. The list of articles that were stolen had been indicated in the FIR. Besides, it was observed that the premises were being used by the petitioners who had moved without authorisation into common areas of the house as described in DDR No. 58 dated 6.5.1998 such as the first floor guest room and prayer room and hall way. In addition, there were a lot of unknown people (domestic servants) in the house and attempts were made to hinder their access into the premises. A request was made to take immediate action and register a case of theft with regard to break into their room occurring through the cooler and punish the culprits and restore the common areas of the status with unhindered access as described in DDR No. 58 following which a case of criminal trespass be registered against the offenders. On the basis of the said complaint, as already noticed, FIR was registered.

3. The Police investigated the matter and challan had been filed. The learned Judicial Magistrate Ist Class framed charges against the petitioners. In the year 2003, the prosecution moved an application for amendment of the charge in terms of Section 216 Cr.P.C. The learned Judicial Magistrate allowed the said application vide his order dated 10.11.2003 and the petitioners were charged for committing the offences under Sections 380, 411, 454 and 120B IPC. Petition No. 1, it is stated, along with his mother had been staying in the house since its construction. Respondent No. 2 is an American citizen and the house was transferred in his name in the year 1990. Therefore, two civil suits were filed seeking the eviction of the petitioners from the house. Both the brothers had come to loggerheads and the same resulted in filing two criminal cases which were pending in various Courts. In October, 2003, the mother of petitioner No. 1 and respondent No. 2 expired. The petitioners have two school going children and respondent Nos. 2 and 3 also have school going son. Now with the intervention of relatives and friends both the petitioners and respondent Nos. 2 and 3 have buried their differences to live a peaceful life in a cordial atmosphere. In furtherance of compromise which had been reached at between the parties, it has been decided that vacant possession of the house in dispute be given to respondent Nos. 2 and 3 by 31.3.2004. The said possession, it is stated, has been given to respondent Nos. 2 and 3 and Shri Rajiv Trikha, learned counsel appearing for respondent Nos. 2 and 3 accepts that the possession has been given to respondent Nos. 2 and 3. Accordingly, it is in terms of the compromise Annexure P2 that it is prayed that the FIR be quashed.

45. On notice, affidavit has been filed by respondent No. 3 in which the factual averments are accepted and it is submitted that the civil suit filed by respondent No. 2 for mandatory injunction qua the property in possession of the petitioners was decreed by both the civil Courts and the same was upheld upto the Apex Court and in the meantime the mother of petitioner No. 1 and respondent No. 2 died and the petitioners came in possession of part of the property held by the

mother since they were staying together for the last 30 years. It is accepted that with the intervention of the relatives and friends both of them decided to bury the hatchet and live a peaceful life. It is also submitted that in terms of the compromise, respondent No. 2 has taken vacant possession of the entire property, i.e., House No. 3002, Sector 32D, Chandigarh to their satisfaction.

6. Learned counsel for the parties are agreed that the evidence in the case is going on and has not been completed so far and on filing of the present petition for quashing the case FIR, this court vide its order dated 23.2.2004 stayed further proceedings before the trial Court. Shri Vikram Choudhary and Rajiv Trikha, learned counsel appearing for the petitioners and respondent Nos. 2 and 3 respectively submit that in the crosscase filed by the petitioners against respondent Nos. 2 and 3 as also the fatherinlaw of respondent No. 2 a Criminal Misc. No. 10997M of 2004 for quashing the criminal complaint No. 132 dated 13.12.2001/29.9.2000 for the offences under Sections 419, 420, 468, 471 read with Section 120B IPC, titled Maninder Singh Pannu v. Jatinder Singh Pannu and others pending in the Court of learned Judicial Magistrate 1st Class along with all subsequent proceedings arising therefrom on the basis of compromise effected between the parties, in view of the statements recorded before the learned Civil Judge (Senior Division), Chandigarh was filed. The said criminal miscellaneous petition was allowed by this Court and the aforesaid criminal complaint was quashed on 13.5.2004 (Annexure P3). In the said order dated 13.5.2004, the factual position was noticed as follows :

"6. Prior to the filing of the complaint, a civil dispute was going on between the parties regarding the house in question. As per the said dispute, in the year 1990, petitioner No. 2 allowed the respondentcomplainant to live on the ground floor of the said house. Subsequently, in the year 1997, he terminated the licence of the respondentcomplainant and filed a suit for mandatory injunction directing him to quit and desist from making use of the portion of the house in his occupation. In the said suit, the respondent complainant took the plea that the house was wrongly transferred in favour of petitioner No. 2 on the basis of a false indemnity Bond. The said suit was ultimately decreed in favour of petitioner No. 2 and a decree for mandatory injunction was passed. Against the said judgment and decree, the respondent complainant filed appeal, which was also dismissed on 29.4.2002. The Regular Second Appeal filed by the respondentcomplainant was dismissed by this Court on 4.11.2003. Further, the SLP filed by him was also dismissed by the Hon"ble Apex Court vide order dated 12.12.2003. In the aforesaid judgment and decree, passed by the Civil Court which was upheld upto the Hon"ble Supreme Court, the question regarding the Indemnity Bond being false and baseless was also gone into and finding was recorded against the respondentcomplainant.

7. During the pendency of the proceedings in the aforesaid complaint, a compromise has been arrived at between the parties with the intervention of the respectables of the families. In pursuance of the compromise, on 24.12.2003,

both the parties made statement before the Civil Court, where the execution proceedings on the basis of the aforesaid decree passed in favour of Petitioner No. 2 were pending. Copies of the statements made by them have been annexed with this Petition as Annexure P3 and P4. On the basis of these statements, the civil dispute between the parties has been amicable settled. In view of this compromise, the instant petition for quashing of the aforesaid complaint has been filed."

7. The above factual position is not in dispute and it is only the crosscase which has been filed by respondent Nos. 2 and 3 against the petitioners that is to be quashed.

8. It is not in dispute that offences attributed to the petitioners in terms of the amended chargesheet dated 10.11.2003, i.e., Sections 380 and 454 IPC are not compoundable. The question, therefore, that requires to be seen is whether where the offences are noncompoundable in terms of Section 320 Cr.P.C. can the proceedings be quashed.

9. In this respect, it may be noticed that the Hon''ble Supreme Court in the case of B.S. Joshi and others v. State of Haryana and another, 2003(2) RCR(Crl.) 888 (SC) , held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It was also observed that it was, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power. In B.S. Joshi's case (supra) reference was made to an earlier decision in State of Karnataka v. L. Munniswamy and others, AIR 1977 SC 1489, wherein while considering the scope of inherent power of quashing under Section 482 Cr.P.C., it was held that in exercise of the said wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require.

10. In Mahesh Chand and another v. State of Rajasthan, 1988(1) RCR(Crl.) 498 (SC) : AIR 1988 SC 2111 , the accused therein were acquitted by the trial Court but were convicted by the High Court for the offence under Section 307 IPC which was not compoundable. The parties therein, however, wanted that it be treated as a special case in view of the peculiar circumstances therein. One of the accused was a lawyer practising in the lower Court and there was a counter case arising out of the same transaction. The Lordships of the Hon''ble Supreme Court after giving anxious consideration to the said case and after examining the nature of the case and the circumstances under which the offence was committed observed that it would be proper that the trial Court shall permit the parties therein to compound the offence. A reference was made to an earlier decision of the Supreme Court in Suresh Babu v. State of Andhra Pradesh, JT 1987(2) SC 361, in which conviction was recorded for the offence under Section 326 IPC and the parties had reconciled their differences and prayer for leave to compound the offence was granted as a special case. In the circumstances, as also observed in B.S. Joshi's case (supra), it is a matter depending upon facts

and circumstances of each case to exercise or not to exercise such a power. As such the exercise of power under Section 482 Cr.P.C. is dependent on the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Therefore, the mere fact that the parties have compromised would not by itself warrant that the proceedings are liable to be quashed as ordinarily the criminal proceedings instituted are liable to be continued against the accused persons are to be tried in accordance with law and this Court would be loath to interfere with the proceedings. However, in an appropriate case the Court may, for the purpose of securing the ends of justice, quash the criminal proceedings.

11. In the case in hand, as already noticed, the dispute is between two real brothers and their respective wives. The dispute has come to a settlement on the demise of the mother of petitioner No. 1 and respondent No. 2. Therefore, it is in the interest of justice and to maintain amity and peaceful existence between the two families with the hope that they develop better relationship and more cordial relations in future that this Court in exercise of its inherent powers and to secure the ends of justice quash the proceedings. This is more so, when the crosscase filed by the petitioners against respondent Nos. 2 and 3 has been quashed on a petition filed by respondent Nos. 2 and 3, i.e., Criminal Misc. No. 10997M of 2004. Besides, the continuation of further proceedings before the trial Court will be an exercise in futility as chances of guilt being recorded where the parties have compromised their dispute are extremely bleak. Therefore, in view of the compromise, it is just and expedient to quash the proceedings.

In view of the aforesaid discussion, this petition is allowed and case FIR No. 49 dated 8.3.1999 (Annexure P1) registered at Police Station South Sector 34, Chandigarh for the offences amended vide order dated 10.11.2003, i.e., Sections 380, 411, 454 and 120B IPC and all consequential proceedings in pursuance of the FIR including the amended charge dated 10.11.2003 shall stand quashed.