

(2015) 10 BOM CK 0160

In the Bombay High Court

Case No : Criminal Writ Petition No. 137 of 2015

Meghanath Pandurang Divkar

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Goa Childrens Act, 2003 — Section 8(2)
Penal Code, 1860 (IPC) — Section 354(A), 354(D), 506(ii)
Protection of Children from Sexual Offences Act, 2012 — Section 12

Citation : (2015) 10 BOM CK 0160

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Pavithran A.V., Advocate, for the Appellant; M. Pinto, Additional Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

K.L. Wadane, J.—Heard Mr. Pavithran A. V., learned Advocate appearing for the petitioner, Mrs. M. Pinto, learned Additional Public Prosecutor appearing for the respondent Nos. 1 and 2 and Mr. R. Menezes, learned Advocate appearing for the respondent No. 3.

2. Rule. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. The learned Counsel appearing for the respondents waives service.

3. The present petition is filed by the petitioner/accused invoking Writ jurisdiction under Articles 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. seeking to quash and set aside the FIR No. 39/2015 lodged by the respondent No. 2.

4. Brief facts of the case may be stated as follows:--

"On 13.3.2015, the complainant/respondent No. 3 lodged the complaint to the Police Station, Old Goa alleging that on 13.3.2015 at about 14.00 hours, he received a phone call from his daughter informing him that his daughter is at Old Goa Police Station, therefore, the complainant along with his wife rushed to the police station. Upon inquiry with his daughter, she informed him that at about 13.35 hours while his daughter along with other students were returning home from the school and when they reached near school gate the petitioner/accused came near her and caught her hand and started pulling her. As there were friends of his daughter she managed to rescue herself."

5. On narration of the facts by the daughter of the complainant, he lodged the complaint to the police station on the basis of which FIR 506(ii) of IPC and Section 8(2) ODF the Goa Children's Act and Section 12 of Protection of Children from Sexual Offences Act("POCSO Act") came to be registered against the petitioner.

6. According to the petitioner, the matter is amicably settled between him and the respondent No. 3. In pursuance of the settlement, the respondent No. 3/ complainant filed an affidavit and thereby stated that the petitioner had one sided liking towards his daughter and being under impression that she too liked him he had tried to approach her and talk to her and he tried to hold her hand. He further states on affidavit that his daughter informed him that after she declined to speak to the petitioner and moved away from that place. Some of her friends who had seen the same instigated her to file police complaint.

7. In paragraph 4 of the affidavit, the complainant/respondent No. 3 has clearly stated that recently his daughter informed his wife that the facts as disclosed in the FIR were not correct and the petitioner had not committed acts of force as stated in her previous statement.

8. Looking to the contents of the affidavit, it appears that the parties have arrived at compromise. The complainant had withdrawn the allegations against the petitioner. In such circumstances, continuation of a trial is nothing but an formality and if trial is allowed to continue then minor child has to attend the Court which is admittedly not heinous and serious offences like murder, dacoity or rape. Due to the compromise between the petitioner and the respondent No. 3, continuation of the criminal proceedings is nothing but an abuse of process. Therefore, in the interest of justice, the petitioner and the respondent No. 3 are permitted to compound the offences and this Court has granted such permission in the interest of justice and in view of the observations of the Apex Court in the Apex Court in the case of Gian Singh Vs. State of Punjab and Another, . The Apex Court at paragraph 61 held thus:--

"61. The position that emerges from the above discussion can be summarised thus: 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 F.I.R 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 fittingly 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 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 predominatingly 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, 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 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."

9. In view of the compromise between the complainant and the respondent No. 3, we are of the opinion that the FIR No. 39/2015 needs to be quashed and set aside. Accordingly, we allow the Writ Petition and FIR No. 39/2015 of Old Goa Police Station lodged for the offence punishable under Sections 354(A) , 354(D) , 506(ii) of IPC and Section 8(2) of the Goa Children's Act and Section 12 of Protection of Children from Sexual Offences Act("POCSO Act") is hereby quashed and set aside.

10. Rule is made absolute.

11. Petition stands disposed of in the aforesaid terms with no order as to costs.