

(2023) 06 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case 187, 411, 2308, 2309 Of 2022

Mohd. Hanief

APPELLANT

Vs

UT Of J&K & Anr

RESPONDENT

Date of Decision : 12-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 120B, 307, 406, 420
Prevention Of Corruption Act, 1988 — Section 5(2)

Citation : (2023) 06 J&K CK 0026

Hon'ble Judges : Mohan Lal, J

Bench : Single Bench

Advocate : Bari abdullah, Monika Kohli, Qadri Towkeer Nazir

Final Decision : Disposed Of

Judgement

Mohan Lal, J

1. By invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure (hereinafter referred as to the ?Code?), the petitioner by instant petition seeks quashment of the Challan titled UT of J&K vs Mohammad Hanief & Anr, pending before the Court of learned Railway Magistrate, Jammu, arising out of FIR No. 68/2015 registered against the petitioners in Police Station Crime Branch, Jammu for the commission of offences punishable under sections 420, 406, 120-B IPC r/w section 5(2) of PC Act.

2. It is averred, that FIR No. 68/2015 for the commission of offences punishable under sections 420, 406, 120-B IPC r/w section 5(2) of PC Act came to be registered at Police Station Crime Branch, Jammu against the petitioner and after completion of the investigation, charge sheet has been filed by respondent No.1 before the Court of learned Railway Magistrate, Jammu; that the petitioner on the basis of the request made by the complainant and his relatives has only filled the pay in slips of the bank for transfer of money and has nothing to do with the cause projected in the FIR; that the charge sheet which is under challenge in the

present petition is an abuse of process of law and is not sustainable in the eyes of law for the reasons that in FIR the name of the petitioner has not been mentioned, there is no whisper in the whole FIR regarding the petitioner except that he has filled the transaction slip of the bank which has been credited into the account of accused No.2 with whom the petitioner is neither having any relation nor is known to each other for the reason that the petitioner is the resident of Poonch and accused No.2 is the resident of Srinagar, as such, the FIR as well as charge sheet impugned requires to be quashed. It is averred, that under the garb of the impugned FIR, the petitioner is being subjected to harassment and victimization by the police notwithstanding the fact that the petitioner has not committed any offence muchless the offence as alleged against him, the entire story as alleged in the impugned FIR, if take on its face value, prima facie proves to be wrong, incorrect and far away from truth and does not bring home the commission of offence punishable under any sections of IPC at all. On this ground also the impugned FIR deserves to be quashed. It is averred, that during pendency of the petition, respondent No.2, who is complainant in the case, present in person and has stated that he does not want to press the instant case as he has entered into a compromise with the petitioner.

3. Besides placing on record, a compromise deed between the complainant and the accused person, the petitioner/accused has also placed on record a certified copy of the challan produced by the Sr. Superintendent of Police, Crime Branch, Jammu in the Court of CJM Jammu against the accused person, wherein it is mentioned that the offence punishable under Sections 5(2) of the Prevention of Corruption Act 1988 were not made out against the accused person which needs to be dropped, however, offence punishable under Sections 420, 120-B IPC were made out against the accused person.

4. Pursuant to the order dated 28.04.2023, the Registrar Judicial has recorded the statements of the parties, the same are placed on record which read as under:-

Statement of Mohd. Hanief (Petitioner No.1); Age; 54 years; S/o Haji Said Mohd; R/o Khari Daramsal, Tehsil Haveli, District Poonch on oath today i.e 28.04.2023;

"Stated, that I have amicably resolved all disputes and issues with Mohammad Hanief (respondent No.2). A compromise deed dated 27.12.2022, duly attested and registered on 27.12.2022 by Notary Public, Jammu, has also been executed between us in this regard and photocopy of the same is placed on the record of the file. In view of our amicable settlement, I pray before the Hon?ble Court to quash FIR No. 68/2015 dated 12.12.2015 registered at Police Station, Crime Branch, Jammu for commission of offences u/s 420, 406, 120-B IPC read with section 5(2) of P.C.Act and consequent chargesheet bearing No. 26/2019 dated 23.12.2019 arising out of the said FIR, pending before the Court of learned Railway Magistrate, Jammu."

Statement of Tawoos Hussain (Petitioner No.2); Age; 37 years; S/o Haji

Mussadiq; R/o Kamal Koot, Tehsil Uri, District Baramulla on oath today i.e 28.04.2023;

"Stated, that I have amicably resolved all disputes and issues with Mohammad Hanief (respondent No.2). A compromise deed dated 27.12.2022, duly attested and registered on 27.12.2022 by Notary Public, Jammu, has also been executed between us in this regard and photocopy of the same is placed on the record of the file. In view of our amicable settlement, I pray before the Hon?ble Court to quash FIR No. 68/2015 dated 12.12.2015 registered at Police Station, Crime Branch, Jammu for commission of offences u/s 420, 406, 120-B IPC read with section 5(2) of P.C.Act and consequent chargesheet bearing No. 26/2019 dated 23.12.2019 arising out of the said FIR, pending before the Court of learned Railway Magistrate, Jammu."

Statement of Mohammad Hanief (respondent No.2); age 40 years S/o Ajab Hussain; R/O Karmara, Tehsil Haveli, District Poonch, on oath today i.e 28.04.2023;

"Stated, that I have amicably resolved all disputes and issues with Mohd. Hanief (Petitioner No. 1) and Tawoos Hussain (petitioner no.2). A compromise deed dated 27.12.2022, duly attested on 27.12.2022 by Notary Public, Jammu, has also been executed between us in this regard and photocopy of the same is placed on the record of the file. Further, I have no grievance against the petitioners and I do not want to pursue the FIR. In view of our amicable settlement, I have no objection in case Hon?ble quashes FIR No. 68/2015 dated 12.12.2015 registered at Police Station, Crime Branch, Jammu for commission of offences u/s 420, 406, 120-B IPC r/w section 5(2) of P.C.Act and consequent chargesheet bearing No. 26/2019 dated 23.12.2019 arising out of said FIR, pending before the Court of Learned Railway Magistrate, Jammu."

5. A question, in view of the aforesaid factual position, has arisen as to whether this Court has power to quash the proceedings, particularly when some of the offences alleged to have been committed by the petitioners, are non-compoundable in nature.

6. In a case titled, "Gian Singh Vs. State of Punjab and Another" reported in 2012 (10) SCC 303", while considering the aspect of whether the High Court has power to quash the proceedings when some of the offences alleged to have been committed are non-compoundable in nature, the Apex Court has observed as follows:

"57. 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 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 offences like murder, rape, dacoity, etc. cannot be 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 offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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 criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding".

7. Hon'ble Supreme Court of India in a case titled "Kapil Gupta vs State of NCT of Delhi &Anr.", decided on 10.08.2022 in Criminal Appeal No. 1217 of 2022 and SLP(Crl.) No. 5806 of 2022, while quashing FIR in rape case u/ss 376 IPC and observing that as compromise has occurred between the parties, charges are yet to be framed, and if trial is permitted to go, it will end in nothing else than an acquittal, in paras 12, 13, 14, 15, 16, 17 & 18 held as under:-

12. No doubt that the learned ASG is right in relying on various judgments of this Court which reiterate the legal position that in heinous and serious offences like murder or rape, the Court should not quash the proceedings. It will be relevant

to refer to paragraph 29.5 to 29.7 of the judgment of this Court in the case of Narender Singh versus State of Punjab, which read thus:

"29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision.

It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/ delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor.

On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the chargesheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above.

On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the

conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No.2 is a young lady of 23 years. She feels that going through trial is one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since the respondent No.2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

17. In that view of the matter, we find that though in a heinous or serious crime like, rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succor to respondent No.2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

18. In that view of the matter, the appeal is allowed and proceedings in the criminal cases arising out of following FIRs are quashed and set aside: 1. FIR

No.569/2020 registered at Police Station, Mehrauli, New Delhi (Rape) 2. FIR No.824/2020, registered at Police Station, Mehrauli, New Delhi (Extortion).

8. Ratio of the judgment of Kapil Gupta's case (supra) makes the legal proposition abundantly clear, that the High Court has inherent powers under Section 482 of Cr.P.C to quash the proceedings to meet the ends of justice subject to the parameters that, if the parties have settled their disputes amicably by a compromise even in a heinous and serious offence of rape, if the application/petition is made at an earliest stage even though charge sheet has been filed but charges are yet to be framed and trial has not commenced, and even if the criminal trial is permitted to go ahead it will end in nothing else than an acquittal. Ratio of the judgment (supra) squarely applies to the facts of the case in hand. Bare perusal of the statements of petitioners and respondent No.2 placed on record demonstrate that the parties have entered into a compromise whereby they have settled their disputes/issues, so there would be no chance of conviction of accused in near future in case trial is held and concluded.

9. In view of the above, this petition stands allowed. Consequently, Challan titled UT of J&K vs Mohammad Hanief & Anr, pending before the Court of learned Railway Magistrate, Jammu, arising out of FIR No. 68/2015 registered against the petitioners in Police Station Crime Branch, Jammu for the commission of offences punishable under sections 420, 406, 120-B IPC as well as the impugned FIR, so far it relates to the petitioner, in view of compromise arrived at between the parties, is quashed.

10. Disposed of accordingly along with all connected CM(s), if any.

11. Copy of this order be sent to the Court of Learned Railway Magistrate Jammu as well as SHO Police Station Crime Branch Jammu for compliance.