

(2016) 08 SHI CK 0116
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 101 of 2014

Mohit Jindal son of Shri Hari Ram Jindal	APPELLANT
Vs	
State of H.P.	RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Citation : (2016) 08 SHI CK 0116

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : Mr. Harish Kumar Verma Advocate, for the Petitioner; Mr. M.L. Chauhan Additional Advocate General, for the Non-petitioner No.1; Mr. Pushpinder Kaundal Advocate, for the other Non-petitioners

Final Decision : Disposed Off

Judgement

P.S. Rana, J.—Order Present petition is filed under Section 482 of Code of Criminal Procedure 1973 to quash FIR No. 176 dated 14.7.2013 registered under Sections 279 and 337 IPC and to quash subsequent criminal proceedings on the basis of out of Court settlement executed inter se parties.

Brief facts of the case

2. Complainant Dr. Davinder Singh son of Shri Jagdev Singh filed criminal complaint under Sections 279 and 337 of Indian Penal Code alleging that he is dentist by profession and he has his own clinic. There is recital in criminal complaint that complainant was going to Mecloedganj along with his friends for sight scene and his friends namely Sahil, Ankush and Mohit were also with him. There is recital in criminal complaint that accused Mohit was driving car having registration No. PB-10-DN-9118 in rash manner upon public way and when they reached near Samela accused Mohit lost control of vehicle and car struck with stone lying near public road and front light of car got switched off. There is recital in criminal complaint that car rolled down for 8-10 times and reached in river and Sahil and Ankush received injuries in accident and complainant also

received injuries upon his arm. There is recital in complaint that accident was caused because car was driven in very high speed upon public way and driver could not control car.

3. Per contra response filed on behalf of non-petitioners Nos. 2 to 4 pleaded therein that non-petitioners Nos. 2 to 4 have no objection if FIR and subsequent criminal proceedings are quashed on the basis of out of Court compromise.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of State and learned Advocate appearing on behalf of non-petitioners No.2 to 4 and also perused the record carefully.

5. Following points arise for determination in present petition:-

Point No.1

Whether FIR No. 176 dated 14.7.2013 relating to criminal offence against society registered under Sections 279 IPC and subsequent criminal proceedings are liable to be quashed as per memorandum of grounds mentioned in petition under Section 482 Cr.P.C.?

Point No.2

Final order.

Findings upon Point No. 1 with reasons

6. Submission of learned Advocate appearing on behalf of petitioner that out of Court settlement executed between petitioner and non-petitioners Nos. 2 to 4 on the basis of annexure P-2 to annexure P-4 placed on record and on this ground petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Hon'ble Apex Court of India in case reported in JT (2014)4 SC 573 title Narinder Singh and others v. State of Punjab and others held that following criminal offences should not be allowed to be compromised on the basis of out of Court settlement. (1) Murder criminal cases. (2) Rape criminal cases. (3) Dacoity criminal cases. (4) Prevention of Corruption Act criminal cases. (5) Offence under Section 307 IPC criminal cases. (6) Offence against Society criminal cases. Hon'ble Apex Court of India further held that following criminal offences should be allowed to be compromised by way of out of Court settlement. (1) Commercial transaction dispute cases. (2) Matrimonial dispute cases. (3) Family dispute cases.

7. Offence under Section 279 IPC is always committed upon public way. It is held that offence under Section 279 IPC is not a criminal offence simpliciter inter se parties but is a criminal offence against society at large because in section 279 IPC the word "Public way" has been mentioned and public way denotes criminal offence against society at large. In present case charge sheet has been filed against accused under Sections 279 and 337 IPC before Judicial Magistrate on 22.8.2013 and notice of accusation has been put to accused by learned

Additional Chief Judicial Magistrate Kangra on 21.9.2015 under Sections 279 and 337 IPC. It is well settled law that when charge sheet is filed against accused then FIR should not be quashed because after filing of charge sheet FIR culminated into charge sheet. See 2015(2) Him.L.R. 1095 titled Nancy Bhatt and another v. State of H.P. and another. It is well settled law that power of quashing FIR and criminal proceedings should be exercised sparingly by High Court with circumspection. It is well settled law that normal process of criminal trial should not be cut short in casual manner. See (1995)2 SCC 449 State of T.N. v. Thirukkural Perumal. See (1992)Supp.1 SCC 335 title State of Haryana v. Bhajan Lal.

8. Submission of learned Advocate appearing on behalf of petitioner that petitioner did not commit any criminal offence as alleged by prosecution cannot be decided at this stage of case. Whether accused committed criminal offence or not is complicated issue of facts. It is not expedient in the ends of justice to give any judicial findings at this stage of case unless opportunities are granted to both parties to prove their case. Issue of absence of mensrea or actus reus would be decided by learned Trial Court after giving opportunities to both the parties to prove their case.

9. In view of the fact that criminal offence under Section 279 IPC is always committed upon public path and is an offence against society at large it is not expedient in the ends of justice to allow the petition. Even criminal offence under Section 279 IPC is non-compoundable criminal offence. Rulings cited by learned Advocate appearing on behalf of petitioner i.e. Cr.MMO No. 165 of 2015 decided on 5.6.2015 title Davinder Kumar v. State of H.P., Cr. MMO No. 316 of 2105 decided on 6.11.2015 title Kulwant Chauhan v. State of H.P., Cr.Misc. Petition No. 33016-M of 2007 decided on 8.8.2007 title Kulwinder Singh and others v. State of Punjab and another and Cr. Misc. No. M-7301 of 2014 decided on 15.7.2014 title Dharampal and another v. State of Punjab are not helpful to the petitioner in view of ruling given by Hon''ble Apex Court of India cited supra. It is well settled law that when there is conflict between ruling announced by Hon''ble High Court and Hon''ble Apex Court then ruling announced by Hon''ble Apex Court always prevails as per Article 141 of Constitution of India. In view of above stated facts point No.1 is answered in negative.

Point No.2(Final Order)

10. In view of findings upon point No.1 petition filed under Section 482 Cr.P.C, is dismissed. Parties are directed to appear before learned Trial Court on 20.9.2016. Observations made in this order will not effect merits of case in any manner and will be strictly confine for disposal of petition filed under Section 482 of Code of Criminal Procedure 1973. Record of learned Trial Court along with certified copy of order be sent back forthwith. Cr.MMO No. 101 of 2014 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.