
(2013) 12 SIK CK 0001
In the Sikkim High Court
Case No : Criminal M.C. No. 21 of 2013

Mr. Tara Rai

APPELLANT

Vs

The State of Sikkim and Mr. Bijay Rai

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) CriLJ 735

Hon'ble Judges : N.K. Jain, Acting C.J.

Bench : Single Bench

Advocate : Zangpo Sherpa, Doma Lepcha and Mr. Tara Rai, Party in Person, for the Appellant; J.B. Pradhan, Public Prosecutor, S.K. Chettri and Pollin Rai, Asstt. Public Prosecutors, Ms. Chunkila Bhutia, Advocate, Mr. Bijay Rai, for the Respondent

Final Decision : Allowed

Judgement

N.K. Jain, Actg. C.J.

1. Heard learned counsel for the parties. The accused-petitioner, Mr. Tara Rai, son of late Deo Kumar Rai, has preferred this petition u/s 482 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.) for quashment of G.R. Case No. 17 of 2013 pending in the Court of Chief Judicial Magistrate, East and North Sikkim at Gangtok, registered on the basis of Challan filed against him u/s 324 of the Indian Penal Code (for short, I.P.C.), on the basis of compromise between the accused-petitioner and the victim, who is respondent No. 2, Bijay Rai, son of late Deo Kumar Rai.

2. Briefly stated, the facts of the case are, that on 02.10.2012 an FIR No. 125(10)12 was lodged at Police Station Sadar, District East by the Station House Officer, Sadar Police Station, on the basis of oral report given by one Sabita Rasaily, wife of Binod Rasaily, wherein it was mentioned that one Tara Rai has assaulted his brother Bijay Rai with machete (bamphok) inflicting grievous bodily injuries and he is at present lying in a pool of blood in the room of a RCC building

owned by the accused. On the basis of this information, the FIR was registered u/s 326 IPC and investigation was commenced. During the investigation of the case, the statements of accused, victim and other witnesses were recorded, the victim was also medically examined.

3. After completion of investigation, the investigating agency submitted the charge-sheet against the accused-petitioner for the offence u/s 324 IPC in the Court of Chief Judicial Magistrate, East & North Sikkim at Gangtok on 01.12.2013. Learned Chief Judicial Magistrate took cognizance of the offence and directed to register the case and also issued summon to accused. The matter is pending before the Court of Chief Judicial Magistrate, East & North Sikkim at Gangtok.

4. Accused-petitioner as well as victim, respondent No. 2, both are real brothers as both are sons of late Deo Kumar Rai. They entered into a compromise and the present petition has been filed by the accused-petitioner for quashment of criminal case pending before the trial Court on the basis of compromise. In support of the petition, the petitioner has annexed a copy of compromise in the shape of affidavit of victim, respondent No. 2, Bijay Rai.

5. The submissions of learned counsel for petitioner as well as respondent No. 2 are that the petitioner as well as respondent No. 2 both are real brothers. There was no previous enmity between them. The victim is the elder brother and is jobless and the accused, who is younger brother of victim is a casual employee in the Government and is supporting his elder brother, victim and also their mother. It is also submitted that both are living in one house. The incident took place all of sudden while both of them were taking liquor and now they have realized their mistake and they have settled their dispute and have filed compromise with this petition for quashment of charge-sheet filed against the petitioner. He also submitted that offence u/s 324 IPC is not compoundable as per Section 320 Cr.P.C., but this Court has ample powers to quash the proceedings of criminal case on the basis of compromise between the parties. He submitted that the incident in the present case took place in the private house of the parties and in fact it was only a family dispute, therefore, proceedings of present case u/s 324 IPC can be quashed by this Court while exercising powers u/s 482 Cr.P.C., to secure the ends of justice. In support of their submission, the learned counsel relied upon a latest decision of larger Bench of the Hon'ble Apex Court in Gian Singh Vs. State of Punjab and Another,

6. Mr. J.B. Pradhan, learned Public Prosecutor submitted that the injury in the present case was inflicted by sharp edged weapon by the accused on the person of injured, which is clear from injury report prepared by the Medical Officer. However, he has not disputed that the accused as well as victim, both are real brothers and living in one house. So far the position of law is concerned, he has submitted that latest decision, in this regard, is of larger Bench of the Hon'ble Apex Court, in the case of Gian Singh (supra), which has been relied upon by counsel for petitioner.

7. I have considered the submission of the learned counsel for the parties.

8. The sole question involved in the present case is as to whether the criminal proceedings pending between parties u/s 324 IPC, which is non-compoundable offence, can be quashed on the basis of compromise between them?

9. From the facts narrated above, it is clear that the incident in the present case took place on 02.10.2012. The statement of victim, Bijay Rai, was recorded during investigation of the case, by the Investigating Officer u/s 161 Cr.P.C. wherein he has stated that he was drinking alcohol in his room, his brother came with alcohol and both were drinking alcohol together, they were chatting and all of sudden a fight took place between them, resulting in inflicting injury. They do not have any past enmity. A translated copy of his statement is available at page 14 of the paper-book, which reads as under:-

TYPED AND TRANSLATED COPY

Statement recorded u/s 161 Cr.P.C. Bijay Rai, S/o Lt. Deo Kumar Rai, R/o Lumsay, 5th Mile, near School Tadong, East Sikkim, occupation Nil.

This is my true statement that, I am a resident of Lumsay and I stay at my Younger brother building.

Me and my mother resides at the ground floor of my younger brother's building. I am a jobless person and mostly I used to drink alcohol.

The day before yesterday, dated 1/10/12, at night time, I was at my room drinking alcohol then after my brother also came with alcohol and we both of us started drinking, but I have no idea about what the time was.

We were chatting with each other with having a drink, and then suddenly there erupted a fight between us. My younger brother hit me with a bottle, and there after I cannot say that what else he hit me with. I could somewhere slightly feel that he also hit me with a "Bamphok".

We do not have any enmity and past rivalry between us, and we were fighting only because of getting drunk. My younger brother look after me and our mother and also we reside at his own house.

That's all my true statement.

ROAC

Sd/-

10. Although the injury in the present case has been inflicted by a sharp edged weapon but the same has been described as "simple" in nature by the Medical Officer. The Investigating Officer has also filed the Challan against the petitioner u/s 324 IPC, which is clear from a copy of Challan available in the file of the trial Court, which has been summoned and also from the order of Chief Judicial Magistrate dated 01.02.2013 whereby cognizance of the offence has been taken.

11. From the facts of the case, it is also clear that accused as well as victim both are real brothers and sons of late Deo Kumar Rai. Both are present in person along with their mother in the Court also. They are living in one house. Both have settled their dispute and have entered into compromise. Respondent No. 2, victim has filed his affidavit before this Court duly attested by an Oath Commissioner, which is available at page Nos. 15 and 16 of the paper book, which also reads as under:-

BEFORE THE OATH COMMISSIONER, EAST SIKKIM, AT GANGTOK AFFIDAVIT

I, Bijay Rai, Son of Late Deo Kumar Rai, aged about 49 years, Hindu by faith, R/O Lumsey, Tadong, 5th Mile, East Sikkim, under P.O. Tadong & P.S. Sadar Police Station, Gangtok, East Sikkim, do hereby solemnly affirm and declare as follows:-

1. That on 02/10/2012, a telephonic Complaint was made before the Sadar Police Station, by Smt. Sabita Rasaily, Wife of Shri Binod Rasaily, of Lumsey, 5th Mile Tadong, East Sikkim. On the basis of the said complaint a FIR No. 125/2012 dated 02/10/2012 u/s. 324 IPC, 1860 was registered against Tara Rai, who is my real brother.

2. That it is humbly submitted that there is no misunderstanding between my brother and myself, we have amicably settled our grievances/disputes. It is further stated that the dispute had arisen on a petty issue when we were heavily drunk and I had no with my brother.

3. That, it is humbly stated that, Mr. Tara Rai, is my own natural brother, who is looks after me and also after our mother and for every expenses incurred for our necessities. He is the only earning member in our family.

4. That, if the proceedings of the case No. G.R. No. 17 of 2013 relating to the FIR No. 125/2012 is continued, then it will bring lot of embarrassment in our family and mental problem to my old aged mother.

5. That, in the view of the above mentioned facts and circumstances, I being the victim in the instant case would like to withdraw the complaint made under FIR no. 125/2012, dated, 02/10/2012.

DEPONENT

VERIFICATION

That, this affidavit is made bonafide and to give above declaration on oath. I, the above named deponent verify and declare that the statements made in above foregoing paragraphs of the Affidavit are true to the best of My knowledge and belief and nothing material has been concealed or suppressed there from.

Sworn this affidavit on this the 21st day November, 2013 at Gangtok, East Sikkim.

Identified By Me:-

Sd/-

Tara Rai

DEPONENT

Sd/-

Bijay Rai

12. The larger Bench consisting of three-Judge of Hon''ble Apex Court in Gian Singh's case (supra), considered a reference, referred by a two-Judge Bench, to see the correctness of the decisions of Hon''ble Apex Court in B.S. Joshi and Others Vs. State of Haryana and Another, , Nikhil Merchant Vs. Central Bureau of Investigation and Another, and Manoj Sharma Vs. State and Others, wherein the Hon''ble Apex Court had permitted compounding of non-compoundable offences relating to matrimonial and civil disputes. Hon''ble Apex Court in Gian Singh's case (supra) considered its various judgments and also the judgment of five-Judge Bench of Kulwinder Singh and Others Vs. State of Punjab and Another, and a judgment of three-Judge Bench of the Bombay High Court in Abasaheb Yadav Honmane and Ashwini Abasaheb Honmane Vs. The State of Maharashtra, Hon''ble Apex Court considered the powers of High Court u/s 482 of the Cr.P.C. and also provision of Section 320 Cr.P.C.

13. The Hon''ble Apex Court in Gian Singh's case (supra) answered the reference and held that it cannot be said that B.S. Joshi, Nikhil Merchant and Manoj Sharma cases (supra) were not correctly decided. The Hon''ble Apex Court held that 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 u/s 320 of the Code. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances in the case.

14. It has further been held by Hon''ble Apex Court that 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 a serious impact on society. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes 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, the 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. Paragraph 61 of the Gian Singh's judgment is reproduced as under:-

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 u/s 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 FIR 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 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 a 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 predominantly 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, the 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 between the victim and the wrongdoer and whether to 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.

(emphasis supplied)

15. From the above, it is clear that Hon'ble Apex Court is specifically barred the

compounding of the non-compounding offences in respect of heinous and serious offences mentioned in paragraph 61 of the judgment but allowed the High Court to quash the criminal proceedings, if in its view, on the basis of compromise of non-compoundable offences, where the offences arise 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.

16. So far as the present case is concerned, the offence u/s 324 IPC is non-compoundable. Although, an injury has been inflicted by a sharp edged weapon, but the nature of injury was simple in nature. The prosecution agency itself has filed Challan u/s 324 IPC and cognizance of offence has also been taken u/s 324 IPC. The accused-petitioner as well as the victim, both are real brothers residing in one house. Both are present along with their mother. Respondent No. 2, victim has filed a compromise by way of an affidavit in the Court. The victim is the elder brother, who, as per his statement, is jobless, whereas the accused-petitioner is the younger brother of the victim and at present he is a casual employee in the Government and he is looking after his elder brother, respondent No. 2 as well as their mother. From the nature of allegations in the Challan, the present case does not appear to be an offence related to public at large but it appears to be a private in nature. The incident took place in the room of the petitioner, where petitioner and the respondent No. 2, both were drinking alcohol sitting together. The incident took place all of sudden when they were chatting with each other.

17. In these circumstances, I am of the view that in case, the proceedings are not quashed in this case, it would tantamount to abuse of process of Court and quashment of proceeding will be in the interest of justice and to secure the ends of justice. Both the brothers are living in one house with their mother, therefore, both will live peacefully in their house. The possibility of conviction is also remote and bleak. The continuation of the criminal proceeding would put the accused to great oppressions 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 view of above, I find this case to be fit one to quash the criminal proceedings against the accused-petitioner in the present case. Consequently, the petition u/s 482 Cr.P.C. is allowed. The entire proceedings of G.R. Case No. 17/2013, pending in the Court of Chief Judicial Magistrate, East and North Sikkim at Gangtok arising out of Challan filed against the petitioner u/s 324 IPC are quashed and set aside.