

(2009) 02 RAJ CK 0014
In the Rajasthan High Court

Munshi Ram Tutlani and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 120B, 304B, 306, 307, 326

Citation : (2009) 2 RLW 1337

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—These two Criminal Misc. Petitions have been filed to seek quashing of criminal proceedings in regard to the offence registered under Sections 420, 467, 468, 471 and 120B of Indian Penal Code (for short "I.P.C."). in Criminal Misc. Petition No. 535/2008, order dated 14.7.2006 has been challenged. In the order dated 14.7.2006 though the Court below acquitted the accused from the offence under Sections 420 I.P.C. based on compromise as said offence is compoundable, however, refused to compound the offence under Sections 467, 468, 471 and 120-B I.P.C. Thus, aggrieved by order dated 14.7.2006 as well as continuous of the criminal proceedings despite of the compromise between the parties, the petitioners have preferred these criminal misc. petitions.

2. The facts of the case are that a case was registered at Police Station Jalupura, Jaipur in regard to a property of hotel Kohinoor for which an agreement was made between the parties. The hotel was given only for management to the accused, but then the accused projected it to be a sale on a consideration and a sum of Rs. 1,60,000/- were shown to have been accepted for sale. According to the complainant, document pertaining to the sale of the property under the agreement and receipt was forged. Hence, pursuant to the aforesaid allegation case was registered. During the pendency of the criminal proceedings, a

settlement was arrived at between the parties wherein reference of certain civil disputes between the parties apart from the criminal case has been made. The reference of the order of the Hon''ble Apex Court dated 29.4.2004 has also been made therein. Thus, apart from the pendency of the criminal case, civil litigation was also pending between the parties in regard to the same property. On arriving at a settlement between the parties, a joint application was made by both the parties for dropping of the criminal proceedings as it was given out that the complainant is not intend to pursue the criminal proceedings further. The Court below accepted the application so far as offence u/s 420 I.P.C. is concerned, but refused to recognize compromise in regard to offence under Sections 467, 468, 471 and 120-B I.P.C as those offences are not compoundable.

3. Learned Counsel appearing for the accused petitioners as well as complainant jointly urged that the dispute being personal in nature between the two parties, thus looking to the aforesaid, this Court while exercising the powers u/s 482 Cr.P.C. can quash the criminal proceedings. To support the arguments, learned Counsel for the petitioner makes a reference of the judgments of this Court as well as Hon''ble Apex Court. It is urged that in the case of Jagdish Chanana and Others Vs. State of Haryana and Another, , a matter registered under the provisions of Sections 419, 420, 465, 468, 469, 471, 472, 474 read with Section 34 of the I.P.C. was ordered to be dropped by quashing the FIR in view of the compromise arrived at between the parties. It Is submitted by both the counsel for the accused and the complainant that in view of the aforesaid judgment, the criminal proceedings in the present matter may also be ordered to be dropped.

4. Learned Counsel for the petitioners further placed reliance on the judgment of the Hon''ble Apex Court in the case of B.S. Joshi and Ors. v. State of Haryana and Anr. reported in 2003 R.C.C. (SC) 400. The reliance has further been placed on the judgment of this Court specifically on the judgment in the case of Majlis and Ors. v. State of Rajasthan and Ors. and other tagged cases reported in 2007 (1) Cri.L.R. 345 apart from the judgment in the case of Amit Kumar Pareek and Anr. v. State of Rajasthan and Anr. report in 2006 Cri.L.R. 1665. The High Court exercising its jurisdiction u/s 482 Cr.P.C. is having inherent powers, thus the riders provided u/s 320 Cr.P.C. cannot come in the way more specifically when the matter has been compromised between the parties.

5. Learned Public Prosecutor appearing in the ease has opposed the criminal misc. petitions. It is urged that though there exists judgments regarding exercising the powers by this Court u/s 482 Cr.P.C. in regard to the cases, which are compromised in non-compoundable cases, but those judgments are required to be seen carefully. It is further urged that in the case of B.S. Joshi and Ors. (supra) as well as in the case of Jagdish Chanana and Ors. (supra), the compromise was made in regard to the dispute, which was purely personal in nature like cases under Sections 498-A, 406 I.P.C. apart from the cases registered u/s 420, 468, 469, 471 and 120-B I.P.C. as the present case is. It is, however, submitted that judgment in the case of B.S. Joshi and Ors. (supra) has

not been correctly understood in other cases where the offence was registered under Sections 326, 307 I.P.C. and on the basis of the compromise in those cases, the criminal proceedings were dropped. Thus, it is prayed that in the case of Majlis and Ors. (supra) does not laid down the correct law rather it is contrary to the judgment rendered by the Hon''ble Apex Court on the subject and reference to various judgments including the judgment in the cases of Surendra Nath Mohanty and Anr Vs. State of Orissa, , Bankat and Another Vs. State of Maharashtra, and Badrilal v. State of M.P. reported in (2005) 7 SCC 55 have been made.

6. Learned Counsel for the accused petitioners in its rejoinder submits that this Court in the case of Bhola Ram and Ors. v. State of Rajasthan in S.B. Criminal Misc. Petition No. 769/03 quashed the criminal proceedings even in non-compoundable cases like case under Sections 336 , 452 I.P.C. Reference of a judgment in the case of Ravindra Singh and Anr. v. State and Ors. in S.B. Criminal Misc. Petition No. 128/08 has also been made wherein the order of the trial Court was challenged refusing to compound case u/s 307 I.P.C. and this Court in the said case also quashed the criminal proceedings based on the compromise. It is, thus, prayed that when in the cases even registered u/s 307 I.P.C. and other cases, criminal proceedings were quashed by this Court based on compromise, then in a criminal proceeding, which is not related to such offences like offence under Sections 307, 336, 452 I.P.C. can be ordered to be quashed being a matter where even civil litigation was existing between the parties and the matter is purely personal in nature, thus the compromise therein can be recognized by this Court.

7. I have considered the rival submissions of the parties and perused the record as well as the judgments on the subject.

8. Perusal of the judgment of the Hon''ble Apex Court in the case of B.S. Joshi and Ors. (supra) and Jagdish Chanana and Ors. (supra), there remains no room of doubt that while exercising inherent powers u/s 482 Cr.P.C, this Court can set aside the FIR and even quashed the criminal proceedings. But in my opinion, such powers can be exercised after taking note of the facts of each case. The compromise between the parties cannot be recognized so as to set aside the FIR and quash the criminal proceedings in regard to all type of offences like offence u/s 307 I.P.C. and other non-compoundable offences in view of the judgment of the Hon''ble Apex Court in the cases of Surendra Nath Mohanti, Bankat and Anr. and Badrilal (supra). On proper consideration of the judgments in the case of B.S. Joshi and Ors. (supra) and Jagdish Chanana and Ors. (supra), it comes out that the offences which are very personal to the parties and a compromise in such matters are going to promote their relation in future as is being a case of matrimonial dispute or a property dispute, which are purely personal in nature, compromise in such dispute even in regard to non-compoundable cases can be recognized for compounding and for the purpose of setting aside the FIR and quashing the criminal proceedings. However, accepting the argument of the

learned Public Prosecutor, I hold that compromise cannot be recognized so as to set aside the FIR and quash the criminal proceedings in the offences like offence under Sections 304-B , 306, 307, 336, 452 & 326 etc. of I.P.C. and any judgment on that issue has to be treated as per-in-curiam in view of the judgments of the Supreme Court referred above.

So far as the present matter is concerned, since the matter related to a hotel property where civil litigations were also existed, which otherwise being settled, thus looking to the nature of the offence involved in the present matter and the present matter remains under Sections 467, 468, 471 and 120B I.P.C, I am of the view that the dispute between the parties being personal, the compromise between the parties can be recognized Relevant para of the judgment of the Hon"ble Apex Court in the case of Jagdish Chandra and Ors. (supra) is quoted hereunder to fortify the view expressed above:

This appeal is directed against the order dated 24th July 2006 rejecting the prayer for quashing of FIR No. 83 dated 12th March 2005 P.S. City Sonapat registered under Sections 419, 420, 465, 468, 469, 471, 472, 474 read with Section 34 of the I.P.C. During the pendency of these proceedings in this Court, Crl. Misc. Petition No. 42/2008 has been filed putting on record a compromise deed dated 30th April 2007. The fact that a compromise has indeed been recorded is admitted by all sides and in terms of the compromise the disputes which are purely personal in nature and arise out of commercial transactions, have been settled in terms of the compromise with one of the terms of the compromise being that proceedings pending in court may be withdrawn or compromised or quashed, as the case may be. In the light of the compromise, it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transactions that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise. We accordingly allow the appeal and quash FIR No. 83 dated 12th March, 2005 P.S. City Sonapat and all consequent proceedings.

9. In view of the discussion made above, as the matter having been settled between the parties, I hereby quash the criminal proceeding pending in these cases and in view of the above, order dated 14.7.2006 would be treated as ineffective to the extent it relates to denying recognition of compromise for offence under Sections 467 , 468 , 471 and 120-B I.P.C.