

(2018) 11 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 661 Of 2018, IA No.01 Of 2018

Noor Hussain And Ors. @APPELLANT@Hash State & Others

Date of Decision : 12-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 323, 336, 341, 452
Indian Penal Code, 1860 — Section 498A
Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 320, 320(9), 482

Citation : (2018) 11 J&K CK 0067

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Ajaz Chowdhary, Sudesh Magotra, Qayoom Choudhary

Final Decision : Allowed

Judgement

1. Through the medium of instant petition filed under Section 561-A Cr.P.C., petitioners seek quashing of FIR No.64/2018 dated 09.05.2018 registered at Police Station, Thannamandi, District Rajouri under Sections 452, 323, 341, 336 RPC and also seek quashing of final report/charge-sheet No.80/2018 dated 02.07.2018 pending in the court of Additional Special Mobile Magistrate Thannamandi registered as File No.46/Challan titled State Vs. Noor Hussain and ors.

2. It is pertinent to mention here that this Court on 23.10.2018, at the statement of learned counsel for the petitioners to the effect that a compromise has been arrived at between the parties, directed the parties alongwith their counsel to appear before the Registrar Judicial of this Court for recording their statements with regard to authenticity of compromise.

3. Pursuant to the aforesaid direction, Registrar Judicial recorded the statements of the petitioners and respondents. The same are placed on record, which read as under:-

Statement of Noor Hussain (petitioner No.1) age:60 years; Occupation: Retired Govt. Employee; S/o Badar Hussain R/o Village Kote Behrote; Tehsil Thannamandi, District Rajouri on oath today i.e. 24.10.2018

That respondent nos.2 and 3 are my close relatives. With the intervention of biradari members, I have entered into an amicable settlement with the respondent nos.2 and 3 outside the Court. In view of the amicable settlement, we pray the Hon'ble High Court to quash final report/chargesheet no.80/2018 dated 02.07.2018 pending before the Court of learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri.

Statement of Sakina Begum (petitioner no.2), Age: 45 years; Occupation: Housewife; W/o Noor Hussain R/o Village Kote Behrote; Tehsil Thannamandi, District Rajouri on oath today i.e. 24.10.2018.

That respondent nos.2 and 3 are my close relatives. With the intervention of biradari members, I have entered into an amicable settlement with the respondent nos.2 and 3 outside the Court. In view of the amicable settlement, we pray the Hon'ble High Court to quash final report/chargesheet no.80/2018 dated 02.07.2018 pending before the Court of learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri.

Statement of Zahoor Hussain (petitioner no.3), Age: 26 years; Occupation: Shop; S/o Noor Hussain R/o Village Kote Behrote; Tehsil Thannamandi, District Rajouri on oath today i.e. 24.10.2018.

That respondent nos.2 and 3 are my close relatives. With the intervention of biradari members, I have entered into an amicable settlement with the respondent nos.2 and 3 outside the Court. In view of the amicable settlement, we pray the Hon'ble High Court to quash final report/chargesheet no.80/2018 dated 02.07.2018 pending before the Court of learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri.

Statement of Mohd. Zaman (respondent no.2), Age: 52 years; Occupation: Govt. Employee; S/o Badar Hussain R/o Village Kote Behrote; Tehsil Thannamandi, District Rajouri on oath today i.e. 24.10.2018.

That all the petitioners are my close relatives. With the intervention of biradari members, I have entered into an amicable settlement with the petitioners outside the court. In view of the amicable settlement, I do not want to pursue the final report/chargesheet no.80/2018 dated 02.07.2018 pending before the Court of learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri. I have no objection if the Hon'ble High Court quashes the proceedings/chargesheet pending before the learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri.

Statement of Sakina Begum (respondent no.3), Age: 35 years; Occupation: Housewife; W/o Mohd. Zaman R/o Village Kote Behrote; Tehsil Thannamandi, District Rajouri on oath today i.e. 24.10.2018.

That all the petitioners are my close relatives. With the intervention of biradari members, I have entered into an amicable settlement with the petitioners outside the court. In view of the amicable settlement, I do not want to pursue the final report/chargesheet no.80/2018 dated 02.07.2018 pending before the Court of learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri. I have no objection if the Hon'ble High Court quashes the proceedings/chargesheet pending before the learned Additional Special Mobile Magistrate, Thannamandi, District Rajouri.

4. Bare perusal of the statements placed on record, it is evident that parties have entered into a compromise whereby they have settled their differences.

5. In case titled Ram Singh & anr. Vs. State of Rajasthan reported in 11 (2005) DMC 412, it is held as under :

"6. I have given my anxious consideration to the above arguments and have gone through the case laws cited at the Bar. It is well settled that while exercising inherent jurisdiction the Court should encourage genuine settlements of the cases arising out of matrimonial disputes. While considering the object of introducing Chapter XX-A containing Section 498A, Their Lordships of the Supreme Court in V.S. Joshi and Ors. v. State of Haryana, , have observed as under:

"There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counter-productive and would act against interest of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code."

7. The present case also arises out of the matrimonial dispute between the parties. Undisputedly the parties have entered into a written compromise and are living peacefully. However, the question that still emerges for consideration of this Court is whether after conviction having been recorded, the offence can be ordered to be compounded and/or the criminal proceedings pending in the Appellate Court can be ordered to be dropped?

8. In O.P. Dholikia's case (supra), Their Lordships of the Supreme Court while dealing with a case arising out of offence under Section 138 of the Negotiable Instruments Act, considered the question as to what is the proper stage for compounding the offence. Their Lordships found force with the argument of the Counsel for the stage that conviction and sentence having been upheld by all the three Forums, the Apex Court need not interfere with the same as it was open for the parties to enter into a compromise at an earlier stage when the appeal

was pending. However, taking into consideration the nature of offence in question and the fact that complainant and the accused had already entered into a compromise, Their Lordships thought it appropriate to grant permission, in the peculiar facts and circumstances of the present case to compound and accordingly annulled the conviction and sentence under Section 138 of the Act.

9. In Govinda's case (*supra*) the accused were convicted and sentenced for offence under Section 498A, I.P.C. and appeal against conviction was pending before the Appellate Court. During pendency of appeal, the parties entered into a compromise and ultimately invoked inherent jurisdiction of this Court under Section 482, Cr.P.C. This Court refused to invoke inherent jurisdiction for assuming direction to compound the offence under Section 489A, I.P.C. But considering the law laid down by the Apex Court in series of decisions referred to in the judgment, this Court ordered for quashing the proceedings in appeal holding that continuance of proceedings would be an abuse of process of law and would not be in the interest of justice.

10. Evidently thus, the present case is squarely covered by the decision of this Court in *Govind and Anr. v. State of Rajasthan*, (*supra*). Therefore, keeping in view the facts and circumstances of the case as stated hereinabove, the continuance of proceedings in appeal pending before the Appellate Court, in my considered view would not be in the interest of justice and keeping the proceedings pending would amount to abuse of the process of Court.

11. In the result, this petition is allowed. The proceedings of Criminal Appeal No. 28/2003 *Ram Singh and Anr. v. State of Rajasthan*, filed against the judgment and order dated 10.12.2003, pending in the Court of Additional Sessions Judge No. 2, Deeg, District Bharatpur are quashed. Necessarily the conviction and sentence under Section 498A, I.P.C. under the judgment and order dated 10.12.2003 passed by the Trial Court stands annulled.

6. In case titled *Central Bureau of Investigation vs Sadhu Ram Singla & ors* reported in 2017 AIR (SC) 1312. It is apt to reproduce paragraphs 8 to 16 as under:

"8. We have heard learned Additional Solicitor General appearing for the CBI and learned senior counsel appearing for the respondents at length and carefully examined the materials placed on record. We have also taken notice of the fact that the counsel for the appellant in High Court had sought time for filing the reply but no reply was filed. We have also taken notice of the fact that the High Court while quashing the said FIR and consequential proceedings, has relied on the Full Bench judgment of that High Court in the case of *Kulwinder Singh & Ors Vs. State of Punjab & Anr.*, 2007 (4) CTC 769, in which reliance was placed on the judgment delivered by this Court in the case of *Mrs. Shakuntala Sawhney Vs. Mrs. Kaushalya Sawhney & Ors.*, (1980) 1 SCC 63.

9. Learned Additional Solicitor General appearing for the CBI has drawn our attention to the decision of this Court in *Manoj Sharma Vs. State & Ors.*, (2008)

16 SCC 1, wherein it was observed by this Court:

"22. Since Section 320 CrPC has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 CrPC to direct doing something which CrPC has expressly prohibited. Section 320(9) CrPC expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence."

10. We further wish to supply emphasis on the judgment delivered by this Court in the case of State of Tamil Nadu Vs. R. Vasanthi Stanley & Anr., (2016) 1 SCC 376, wherein it was observed:

"15. As far as the load on the criminal justice dispensation system is concerned it has an insegregable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of."

11. Further reliance was placed on the decision of this Court in the case of Central Bureau of Investigation Vs. A. Ravishankar Prasad & Ors., (2009) 6 SCC 351, wherein it was held:

"39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice."

12. Lastly, reliance was placed upon another judgment of this Court in Central Bureau of Investigation Vs. Maninder Singh, (2016) 1 SCC 389, wherein it was held by this Court:

"19. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi case, (2014) 15 SCC 29, the order of the High Court cannot be sustained."

13. Resisting the aforesaid submissions it was canvassed by Mr. Bishwajit Bhattacharya, learned senior counsel appearing for the respondents that High

Court has judiciously and rightly considered the facts and circumstances of the present case. Relying upon the judgment of this Court in *Gian Singh Vs. State of Punjab & Anr.*, (2012) 10 SCC 303, learned senior counsel appearing for the respondents strenuously urged that the offences in the present case are not heinous offences. He further drew our attention towards the relevant part of Full Bench judgment of the High Court in *Kulwinder Singh & Ors. Vs. State of Punjab & Anr.* (supra), which was reproduced in the impugned judgment and the same is reproduced hereunder:

"26. In *Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney & Ors.*, (1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summed up the essence of compromise in the following words :-

The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything; except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C. or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C."

14. Since the present case pertains to the crucial doctrine of judicial restraint, we are of the considered opinion that encroaching into the right of the other organ of the government would tantamount clear violation of the rule of law which is one of the basic structure of the Constitution of India. We wish to supply emphasis on para 21 of the *Manoj Sharma's* case (supra) which is as follows:

"21. Ordinarily, we would have agreed with Mr. B.B. Singh. The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in *Aravali Golf Club v. Chander Hass* (2008) 1 SCC 683 and *Govt. of A.P. v. P. Laxmi Devi* (2008) 4 SCC 720, restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ."

15. Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in *Manoj Sharma's* case (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of

the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties."

7. In view of the above law, this petition is allowed.

8. Consequently, FIR No.64/2018 dated 09.05.2018 registered at Police Station, Thannamandi, District Rajouri under Sections 452, 323, 341, 336 RPC as also final report/charge-sheet No.80/2018 dated 02.07.2018 pending in the court of Additional Special Mobile Magistrate Thannamandi registered as File No.46/Challan titled State Vs. Noor Hussain and ors., are quashed in view of compromise arrived at between the parties.

9. Copy of this order be sent to Court below for compliance.