

(2024) 11 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.39695 of 2024

Praveen Parmar

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 14-11-2024

Acts Referred:

Code of Criminal Procedure 1973 — Section 320, 482

Indian Penal Code 1860 — Section 342, 376(1)

Protection of Children from Sexual Offences Act, 2012 — Section 3/4

Citation : (2024) 11 MP CK 0012

Hon'ble Judges : Prakash Chandra Gupta, J

Bench : Single Bench

Advocate : Piyush Dubey, R.S.Suryavanshi, Satish Chandra Lakhara

Final Decision : Dismissed

Judgement

Prakash Chandra Gupta, J

This petition u/s 482 of Code of Criminal Procedure, 1973 filed by the applicant/accused for quashing FIR, bearing crime no.153/2023, offence u/s 376(1), 342 of IPC, 3/4 of POCSO Act, registered at P/S Nahar Darwaza, Distt. Dewas and all the subsequent proceedings of the criminal case.

2. As per prosecution case, the prosecutrix is minor, aged around 14 years. The prosecutrix and applicant were acquainted with each other being neighbours. On 12.05.2023 at around 03:00 AM when the prosecutrix went for nature's call, then the applicant had caught hold her and took her to his house and committed rape upon her. After the incident the prosecutrix went to her house and narrated the incident to her family members. The matter was reported on the same day. After completion of investigation, chargesheet was filed and trial is pending before the Special Judge, Dewas.

3. Subsequently on the basis of amicable settlement arrived between the parties a joint compromise petition u/s 320(2) of CrPC was filed before this court and

the factum of compromise has been verified by the Principal Registrar of this court on 24.10.2024.

4. It is submitted by learned counsel for the petitioner and respondent no. 2 that the matter has been amicably settled between the parties and they have arrived at peaceful settlement. Both of the parties are of the same caste and community are neighbours residing in the same locality. They are in love with each other and have planned to get married. It is also submitted that at present there are cordial relationship between both the parties and their family members. Therefore, continuance of the proceeding will amount to sheer wastage of valuable time of the court and will also result in harassment of the parties.

5. Learned counsel for the respondent no. 2 has also admitted that the matter has been amicably settled between the parties and prosecutrix has no objection if the FIR is quashed.

6. On the other hand learned counsel for the State submits that alleged offences are not compoundable u/S 320 of CrPC except Section 342 of IPC.

7. I have heard learned counsels for the parties and perused the case diary.

8. This court vide order dated 22.10.2024 had directed both the parties to appear personally before the Principal Registrar of this court on 24.10.2024 for verification of factum of the compromise. The petitioner is in jail therefore, his presence has been marked through VC and the prosecutrix personally appeared alongwith her parents before the Principal Registrar of this court and as per the report, the matter has been amicably settled between both the parties and they have entered into compromise voluntarily without any undue influence, inducement and coercion. However, as per the verification report alleged offence are not compoundable but offence u/s 342 of IPC is compoundable u/s 320 (1) of CrPC.

9. Learned counsel for the petitioner placed reliance on the case of Shivam alias Siddharth Vs. Officer Through P.S. Vijay Nagar And Anr. [MCRC no. 3853/ 2024], Shridhar Lal Ateriya Vs.State of Madhya Pradesh And Anr. [MCRC no. 50665/ 2023] and Rohit Vs. State of Madhya Pradesh And Anr. [MCRC no. 10137/ 2023].

10. In the case of Rohit (Supra), Shridhar Lal Ateriya (Supra), Shivam alias Siddharth (Supra) the coordinate bench of this court has quashed the FIR and subsequent proceeding of criminal case in likewise offences of this case.

11. In the case of Sunil Vs. State Of M.P. And Anr. [Order dated 06/03/2024 in MCRC no. 8158/ 2024] the coordinate bench of this court has held as under:-

"7. In the case of Yogendra Yadav & Ors. vs. The State of Jharkhand & Anr. AIR 2015 SC (Criminal) 166, the Apex Court held as under :-

"Needless to say that offences which are non-compoundable cannot be compound by the Court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian

Singh V. State of Punjab). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace."

12. In the case of Virender Chahal Vs. State And Anr. [2024 SCC Online Del 1630] the Delhi High Court has opined as under:-

"37. Time and again, the Hon'ble Apex Court as well as this Court has held that criminal proceedings arising out of heinous offence such as rape cannot be quashed, merely on the basis of some settlement agreement executed between the accused and the victim, except in cases where there may be extraordinary circumstances to show that continuation of criminal proceedings in a case of serious nature would in fact result in abuse of process of law or miscarriage of justice. As expressed in case of State of M.P. v. Madanlal (Supra), under no circumstance can one even think of compromise in a case of rape."

13. In the case of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur And Ors Vs. State Of Gujarat And Anr. [Cra No. 1723/2017, Judgment Dated 04/10/2017], the Apex court has observed as under:-

"15 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under

Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

14. In the case of Narinder Singh V State of Punjab [(2014) 6 SCC 466] the Apex Court highlighted the following principles:-

"1. The power of the court u/S 482 of CrPC is an inherent power which can be attracted even if the offence is non compoundable.

2. The power u/S 482 of CrPC has to be exercised sparingly and with caution.

3. This power cannot be exercised in case involving heinous and serious offences of mental depravity or offence like murder, rape, dacoity etc. Such offences are not private in nature and have a serious impact on society.

4. The court is under obligation to look at the nature and gravity of an offence while deciding on an application for quashment of FIR on the ground of compromise."

15. It is apparent from the aforementioned judgment that the ultimate objective of inherent power vested with the High Court is to prevent the abuse of process of court and miscarriage of justice. This power shall be exercised sparingly in the case involving heinous offences especially whereby the victims are minors, who are subjected to sexual offences.

16. In view of aforesaid position of law, the concept of compromise with regard to the offence of rape cannot be accepted in a routine manner but the nature of offence is considerable. No doubt, in the instant case compromise application has been filed by the prosecutrix which shows that she does not want to prosecute the FIR against the petitioner but the offence is related to rape of a minor which is serious and heinous in nature and affects the society, accordingly, in absence of any extraordinary circumstance it is not appropriate to quash such kind of offences despite of settlement between the parties.

17. Accordingly, this petition filed u/S 482 of CrPC is hereby dismissed.