

(2008) 10 BOM CK 0075

In the Bombay High Court

Case No : Criminal Application No. 412 of 2008

Qayyum Ibrahim Mohammad Shaikh, Mr. Salim Abu Sama
Khan and Iqbal Ismail Shaikh @ Iqbal Hatela

APPELLANT

Vs

The State of Maharashtra and Mohammed Talha Abdul Mutali
Ansari

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Arms Act, 1959 — Section 27, 4

Bombay Police Act, 1951 — Section 37

Criminal Procedure Code, 1973 (CrPC) — Section 107, 155(2), 156(1), 320, 320(1)

Penal Code, 1860 (IPC) — Section 114, 302, 324, 325, 326

Citation : (2008) 10 BOM CK 0075

Hon'ble Judges : Bilal Nazki, J;A.A. Kumbhakoni, J

Bench : Division Bench

Advocate : M.H. Bandekar, for the Appellant; S.D. Shinde, APP, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—This application has been filed to quash the FIR No.23/2008 registered by the Antop Hill Police Station, Mumbai, on 21st January, 2008 for the offences u/s 326, 324, 506, 427 and 34 of the Indian Penal Code. The main ground for quashing of FIR is that the complainant and the applicants have settled the differences in between themselves.

2. It may be stated at the outset that the criminal law is based on the principles that the offences committed are against the State and also against the victim. Therefore, the scheme of the Criminal Procedure Code is such that most of the serious offences are not compoundable, less offences are compoundable with the permission of the court and some trivial offences are compoundable at the behest of the complainant. If this scheme is kept in mind, then it will be clear that even if the victims or the injured are prepared to compromise the matter the State itself insists on conviction and punishment because the offence is

against the State. In any case the applicants have not come to this court for compounding of the offence but have come for quashing of the FIR against them.

3. Now the principles laid down by the Supreme Court are so well enumerated that it will not be difficult to come to a conclusion whether in the present case the FIR could be quashed or not. It may be remembered that the criminal jurisprudence in this country is that once an investigation discloses commission of an offence it should reach to its normal conclusion by way of a fair trial. We will not deal with many judgments which have been delivered from the Privy Council till date. But we will only refer to the principles which have been followed in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, because the principles laid down in this judgment were in fact the principles which had been laid prior to this judgment and were consolidated by this judgment and even after 1992 these principles have been followed. In paragraph 108 of the judgment the following principles were laid down :

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
5. Where the allegations made in the FIR or complaint, are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In as much as the scope of Section 320 of the Code is concerned, the Constitution Bench of the Supreme Court in the case of *Union Carbide Corporation and Ors. v. Union of India and Ors.* reported in ` , has

observed thus:

84. Learned Attorney General said that Section 320 Criminal Procedure Code is "exhaustive of the circumstances and conditions under which composition can be effected" and that "the courts cannot go beyond a test laid down by the legislature for determining the class of offences that are compoundable and substitute one of their own". Learned Attorney General also referred to the following passage in *Biswabahan Das v. Gopen Chandra Hazarika*.

If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal.

He said that "if a criminal case is declared to be noncompoundable, then it is against public policy to compound it, and any agreement to that end is wholly void in law." (See *Majibar Rahman v. Muktashed Hossein*); and submitted that court "cannot make the legal which the law condemns". Learned Attorney General stressed that the criminal case was subject matter of any compromise or settlement. There is some justification to say that the statutory prohibition against compounding of certain class of serious offences, in which larger social interests and social security are involved, is based on broader and fundamental considerations of public policy. But all statutory prohibitions need not necessarily partake of his quality. The attack on the power of the apex Court to quash the criminal proceedings under Article 142(1) is ill-conceived. But the justification for its exercise is another matter."

4. Now in the light of these principles and in the light of the application itself it can be safely said that the FIR discloses cognizable offence having been committed. The affidavit filed by the Assistant Police Inspector further states that during the course of investigation, one chopper used in incident was recovered at the instance of applicant No.1. The motor cycle used in the incidence belonged to Applicant No.1. Not only the statement of the complainant was recorded but the statement of three eye witnesses were also recorded, who were present at the spot of incidence. Even if it is accepted that the applicants and the complainants have resolved their disputes, even then there will be witnesses, who may testify during the trial against the accused. Therefore, we cannot scuttle the prosecution at this stage. In the Court it is also stated that the applicants who have come to this Court have otherwise many many cases pending against them, as below:

The Applicant No.1 is involved in following cases :

- 1) C.R. No. 89/2008 u/s 379 of the Indian Penal Code registered at D.B. Marg Police Station.
- 2) Court Case No. 79/2008 u/s 107 of the Criminal Procedure Code.

The Applicant No.2 is involved in following cases :

- 1) Spl. L.A.C. No. 2040/1987 u/s 37(a) of Bombay Police Act at Kalachowky

Police Station;

2) Spl. L.A.C. No. 1809/1988 u/s 37(a) of Bombay Police Act at Kalachowky Police Station;

3) L.A.C. No. 78/1989 u/s 37(a) of Bombay Police Act at Kalachowky Police Station;

4) C.R. No. 317/1989 u/s 326, 448, 506 (II) of I.P.C. at Kalachowky Police Station.

5) C.R. No. 12/1990 u/s 326, 114 of I.P.C. at Kalachowky Police Station.

6) C.R. No.2/1991 u/s 379, 114 of I.P.C. at Kalachowky Police Station.

7) C.R. No. 337/1991 u/s 326, 114 of I.P.C. at Kalachowky Police Station.

8) C.R. No. 218/1993 u/s 450, 395, 346 r/w 34 of I.P.C. at Dongari Police Station.

9) C.R. No. 172/2004 u/s 379 r/w 34 of I.P.C. at Bhandup Police Station.

10)C.R. No. 208/2004 u/s 379, 34 of I.P.C. at Mahim Police Station.

11)C.R. No. 57/2003 u/s 324 of I.P.C. at Antop Hill Police Station.

12)L.A.C. No. 17/2005 u/s 37(a) of Bombay Police Act at Antop Hill Police Station.

The Applicant No.3 is involved in following cases :

1) C.R. No. 107/1998 u/s 324, 34 of Indian Penal Code;

2) C.R. No. 181/1998 u/s 397, 460, 34 of Indian Penal Code;

3) C.R. No. 398/2002 u/s 324, 34 of Indian Penal Code;

4) C.R. No. 64/2003 u/s 324, 506 (II), 34 of Indian Penal Code;

5) C.R. No. 38/2004 u/s 324, 506 (II), 34 of Indian Penal Code;

6) C.R. No. 45/2004 u/s 324, 506 (II) of Indian Penal Code;

7) C.R. No. 311/2005 u/s 326, 34 of Indian Penal Code;

8) C.R. No. 203/2006 u/s 506 (II), 452, 34 of Indian Penal Code;

9) C.R. No. 227/2006 u/s 506 (II) of Indian Penal Code and Section 4, 27 of Indian Arms Act.

5. Learned Counsel for the applicants has relied on various judgments of the Supreme Court in which the offences were allowed to be compounded, being the case of Mahesh Chand and Anr. v. State of Rajasthan reported in 1990 (Supp) Supreme Court Cases 681. This was an appeal pending before the Supreme Court where the conviction u/s 307 of the Indian Penal Code had been challenged and during the hearing of the appeal the parties wanted to compound the offence. The Supreme Court noted, "The accused were acquitted

by the trial court, but they were convicted by the High Court for the offence u/s 307 IPC. This offence is not compoundable under law. The parties, however, want to treat it as a special case, in view of the peculiar circumstances of the case." Then the Supreme Court in paragraphs 3 and 4 held as under:

3. We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence.

4. We, therefore, direct the trial Judge to accord permission to compound the offence, after giving an opportunity to the parties and after being satisfied with the compromise agreed upon. The connected papers filed in this connection before this Court be transmitted to the trial court for the purpose. The parties, if they want, may file additional documents. Obviously the court considered this case to be a special case and exercised the power under Article 141 of the Constitution of India and as such this judgment is not a precedent for this court to follow. It may also be noted that while the Supreme Court passed this order the whole evidence was before the Supreme Court as the accused were already convicted. We are only dealing with the FIR.

6. The case of Madan Mohan Abbot Vs. State of Punjab, is the case where the offence was allowed to be compounded by the Supreme Court on the ground that it came to the following conclusion:

We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused.

This is not so in the present case where the Police Officer in his counter has stated that even another FIR is pending against the Applicant No.3 for an offence u/s 302 read with Section 34 of the Indian Penal Code at J. J. Marg Police Station. Therefore, in our view, this judgment would also be of no help to the applicants.

7. There is another judgment in the case of Rajinder Singh Vs. State (Delhi Administration), In this case only the offence u/s 325 was compounded. For other offences which were noncompoundable, the sentence were reduced. Another Judgment in the case of Krishan Lal Vs. State (Delhi Administration), in special leave to appeal the Supreme Court found that the accused were guilty u/s 324 of the Indian Penal Code which was compoundable and therefore they were allowed to compromise. The applicants have also relied on a judgment of the Full Bench of this Court in the case of Abasaheb Yadav Honmane and Ashwini Abasaheb Honmane Vs. The State of Maharashtra, on the principles of quashing. The Full Bench of this Court also relied on the earlier judgments of the Supreme Court and the principles laid down in the case of Bhajan Lal (Supra). In

paragraphs 7.10 it referred to the various judgments of the Supreme Court and carved out the principles as laid down by the Supreme Court in some of the judgments. These principles may also be enumerated below:

1. The High Court, in exercise of its inherent powers u/s 482 of the Code, may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice very sparingly and with circumspection;
2. Inherent power u/s 482 of the Criminal Procedure Code should not be exercised to stifle a legitimate prosecution;
3. Power u/s 482 of the Criminal Procedure Code is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the Court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law;
4. The inherent power of the High Court can be invoked in respect of matters covered by the provisions of the Code unless there is specific provision to redress the grievance of the aggrieved party;
5. Inherent power u/s 482 of the Code overrides provisions of the Code but evidently cannot be exercised in violation / contravention of a statutory provision or power created under any other enactment;
6. Power u/s 482 to quash proceeding should not be used mechanically or routinely, but with care and caution;
7. Such power should be used only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice;
8. Inherent jurisdiction u/s 482, Criminal Procedure Code may be exercised in following three circumstances.
 - (i) to give effect to an order under the Criminal Procedure Code;
 - (ii) to prevent abuse of the process of Court; and
 - (iii) to otherwise secure the ends of justice.
9. Inherent power should be exercised to do the right and undo a wrong; 10. In exercise of inherent power u/s 482 of the Code, Court would be justified to quash any proceeding if the initiation / continuation of such proceeding amounts to 'abuse of the process' of the Court or quashing of the proceeding would otherwise serve the ends of justice;
11. While exercising inherent power u/s 482 of the Code, High Court must refrain from making imaginary journey in the realm of possible harassment which may be caused to concerned petitioner on account of investigation of FIR or complaint;

12. While exercising inherent power u/s 482 of the Code, the High Court must all the while be conscious of the fact that its exercise of such power will not result in miscarriage of justice and will not encourage those accused to repeat the crimes;

13. The inherent powers of High Court u/s 482 of the Code, cannot be exercised in regard to matters specifically covered by the other provisions of the Criminal Procedure Code;

14. For the purpose of quashing, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint;

15. The exercise of inherent jurisdiction u/s 482 of the Code should not be such as to harm legitimate expectation of the people and the society, that the persons committing offence are expeditiously brought to trial and if found guilty are adequately punished;

16. Inherent powers may be used only when reasonably necessary for the Court to be able to function and Courts may not exercise inherent powers merely because their use would be convenient or desirable;

17. The exercise of inherent power would be necessary whenever it is just or equitable and it should be to ensure observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties and to secure a fair trial; and

18. While passing an order quashing FIR or criminal proceedings, as the case may be, it may be appropriate for the Court to examine the impact of such an order upon the system of administration of criminal justice and the social fabric. This, of course, is not a determinative factor but only a relevant consideration. Then in paragraph 9 the Full Bench held as under:

9. We have already held that power of the Court to compound offences and power to quash the FIR or criminal proceedings are distinct and different. They operate in different spheres and are different concepts of criminal jurisprudence. Power to quash an FIR or criminal proceedings u/s 482 of the Code finds its source from Judge made law, while power to compound is a statutory power granted by the language of Section 320 of the Code. Both these powers have nothing in common except the ultimate result, that is, acquittal. They have to be exercised upon satisfaction of different criteria, fulfilment of relevant ingredients and satisfaction of the object of legislative intent behind these provisions. Power to quash the criminal proceedings is a power which springs from the generality of the provisions of Section 482 of the Code and to be exercised in consonance with the judicial pronouncements.

8. While dealing with two judgements of the Supreme Court reported in Ram Lal and Another Vs. State of Jammu and Kashmir, and Y. Suresh Babu Vs. State of

A.P. and Another, the Supreme Court has observed in the case of Surendra Nath Mohanty and Anr Vs. State of Orissa, as under:

5. In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, a complete scheme is provided u/s 320 of the Code of Criminal Procedure, 1973. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, Sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, Sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under the Indian Penal Code could not be compounded.

8. We reiterate that the course adopted in Ram Pujan v. State of U.P. and Mahesh Chand v. State of Rajasthan was not in accordance with law....

9. For the reasons given above, we do not find any merits in the application and the FIR cannot be quashed at this stage. Accordingly, the application for quashing of the FIR No.22 of 2008 registered with the Antop Hill Police Station, Mumbai on 21st January, 2008 is rejected.