
(2014) 12 BOM CK 0004

In the Bombay High Court

Case No : Criminal Application No. 6785 of 2014

Rahul

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 379

Citation : (2015) ALLMR(Cri) 277 : (2015) 2 BomCR(Cri) 509

Hon'ble Judges : S.S. Shinde, J;N.W. Sambre, J

Bench : Division Bench

Advocate : V.B. Jogdand, Advocate for the Appellant; S.G. Nandedkar, A.P.P, Advocate for the Respondent

Judgement

S.S. Shinde, J.—Learned Counsel for the applicant makes an oral prayer to transpose applicant no.2 as party respondent no.2. Prayer granted. Amendment to be carried out forthwith.

2. Rule. Rule is made returnable forthwith and by consent, the matter is heard finally.

3. The applicant and respondent no.2 - complainant have filed the settlement duly signed and verified. Learned Counsel appearing for the applicant has identified both; the applicant and complainant.

4. Paragraphs 3 and 4 of the said settlement deed reads thus:-

"3. That, party no.1 and party no.2 have entered in to a settlement deed and both the parties want put an end to all litigation.

4. That both the parties in respect of the subject matter of Crime No.I-324 of 2014 will not file any application, suit, complaint or proceeding against each other. Party No. 1 will file petition for quashing and in that proceeding party no.2 will appear and will give consent."

5. It appears that the applicant and complainant both are students and having friendly relations with each other as stated in the settlement deed. The complainant Shivaji Goraknath Katkade is owner of the vehicle. There was allegation in the first information report that his vehicle was stolen by the applicant Rahul Pandurang Magar, however, subsequently it was found that actually the vehicle was not stolen but it was taken by Rahul Pandurang Magar out of friendly relations. Since the applicant and complainant are students and they have decided to set at rest the dispute arose between them, we are inclined to allow this application.

6. It is true that there are allegations which would prima facie attract the provisions of section 379 of the Indian Penal Code, however, if the allegations in the first information report are read in the light of settlement deed, said section 379 of the Indian Penal Code is not attracted.

7. In the case of Gian Singh Vs. State of Punjab and Another, , the Apex Court has laid down the broad guidelines to be followed while exercising the powers u/s. 482 of Cr.P.C. The Apex Court has held as follows :

"61. 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 under Section 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 befittingly 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 of 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 predominately 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 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 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."

8. In the light of discussion made herein above, application is allowed. Rule made absolute in terms of prayer clause (B).