

(2020) 02 CHH CK 0103

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 362 Of 2020

Rameshwar Lal And Anr

APPELLANT

Vs

State Of Chhattisgarh And Anr

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 320(2), 482
Indian Penal Code, 1860 — Section 34, 420

Citation : (2020) 02 CHH CK 0103

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Zala Laxmansinh Mangalsinh, Ravi Kumar Bhagat, Astha Shukla, Yogendra Singh Rajput

Final Decision : Allowed

Judgement

1. This petition under Section 482 of the CrPC is directed seeking quashment of FIR No.693/2018 registered at Police Station Kotwali, Durg for

offence punishable under Section 420 read with Section 34 of the IPC registered against the petitioners on a complaint lodged by respondent No.2

herein stating inter alia that the petitioners obtained an amount of Rs. 1,64,065/- from him with intention to commit cheating and thereby committed the

offence. It was stated that the said amount was obtained in the name of a lifetime tour package which includes stay in a hotel for four days and five

nights for free. It is the further case of respondent No.2 that after purchasing the said tour package, he went to Delhi along with his family on 28-6-

2018, but there was no booking of any hotel at Delhi under the package and he came to know that no such package has been provided and he was

dishonestly cheated by the petitioners and the above mentioned amount was

obtained.

2. Now, this petition has been preferred stating inter alia that the matter has been compromised between the petitioners and respondent No.2

complainant, therefore the first information report (FIR) be quashed.

3. An affidavit has also been filed by the complainant / respondent No.2 before this Court on 5-2-2020 clearly stating that Sterling Holidays Limited

had already returned his entire amount to respondent No.2 which he paid for membership and no dispute is pending and respondent No.2 has settled

the dispute with the petitioners.

4. Statements of petitioner No.1 and the complainant have been taken before the Additional Registrar (Judicial) pursuant to the direction given by this

Court on 6-2-2020 and the matter has been placed for consideration. In the statement recorded before the Additional Registrar (Judicial), respondent

No.2 / complainant has clearly stated that he has settled all the disputes with the petitioners and he has no grievance at all to continue.

5. Mr. Zala Laxmansinh Mangalsinh, learned counsel appearing for the petitioners, would submit that since the entire amount has already been paid

and the dispute has been settled, therefore, in light of the decision rendered by the Supreme Court in the matter of Gian Singh v. State of Punjab and

another (2012) 10 SCC 303, the FIR deserves to be quashed.

6. Mr. Yogendra Singh Rajput, learned counsel appearing for respondent No.2 / complainant, would submit that respondent No.2 had already received

the entire amount in dispute, as such, no grievance subsists.

7. I have heard learned counsel for the parties and considered their submissions made herein-above and also went through the material available on

record with utmost circumspection.

8. Offence under Section 420 of the IPC may be compoundable by the person cheated and the said offence is compoundable with the leave of the

court under Section 320(2) of the CrPC. A careful perusal of the FIR would show that complaint was lodged by respondent No.2 alleging that Rs.

1,64,065/- was obtained for enrolling him as members in Sterling Holidays Limited, but no membership was provided and no such booking was

provided in any hotel under the package though respondent No.2 reached at Delhi on 28-6-2018. The FIR further records that respondent No.2

demanded the money back from the petitioners and in case the money is not refunded, he will lodge FIR and ultimately, on non-payment of money,

the FIR was lodged against the petitioners by respondent No.2.

9. The Supreme Court in *Gian Singh* (supra) held that heinous and serious offences of mental depravity, murder, rape, dacoity, etc., or under special

statutes like Prevention of Corruption Act or offences committed by public servants while working in their capacity as public servants, cannot be

quashed, such offences are not private in nature and have a serious impact on society. It has been observed as under: -

61. The position that emerges from the above discussion can be summarised thus: 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 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 be

fittingly 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 on society. Similarly, any compromise between the victim and 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 predominatingly 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 between 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 the 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.â??

10. However, in the instant case, looking to the contents of the FIR, complaint filed by the complainant, statements of petitioner No.1 and the complainant / respondent No.2 recorded before the Registry of this Court, it is quite vivid that the only grievance of the complainant was refund of his money of Rs. 1,64,065/- which he has admittedly received back from Sterling Holidays Limited where the petitioners were serving at the time of commission of the offence.

11. In view of the compromise between the petitioners and the victim / respondent No.2, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great prejudice. Since the amount in dispute has already been returned by Sterling Holidays Limited to respondent No.2 and looking to their statements before the Registry of this Court and the affidavit filed by respondent No.2, it would be unfair or contrary to the interest of justice to continue with the criminal proceeding pursuant to the FIR.

12. Consequently, accepting the statement of respondent No.2 and in light of the decision of the Supreme Court in Gian Singh (supra) and since the matter has been settled between the parties and it only relates to refund of amount already paid by Sterling Holidays Limited in which the petitioners were working under and that the offence under Section 420 of the IPC is

compoundable by the person cheated, leave is granted to compound the offence and it would be expedient to quash FIR No.693/2018 registered at Police Station Kotwali, Durg against the petitioners. It is ordered accordingly and said FIR is quashed.

13. It is stated that petitioner No.2 is in jail pursuant to FIR No.693/2018. He be released forthwith, if not required in any other case.

14. The petition is allowed to the extent indicated herein-above.

15. Certified copy by tomorrow.