

(2015) 01 BOM CK 0275

In the Bombay High Court

Case No : Criminal Application No. 5425 of 2014

Satish and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 320, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(iv), 3(i)(iv)

Citation : (2015) ALLMR(Cri) 3242

Hon'ble Judges : S.S. Shinde, J;A.M. Badar, J

Bench : Division Bench

Advocate : S.J. Salunke, Advocate h/f G.J. Pahilwan, for the Appellant; P.J. Bharad, APP and C.D. Biradar, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This is an application under Section 482 of the Code of Criminal Procedure 1973 (Cr.P.C. for the sake of brevity), whereby the applicants/accused in Charge Sheet No. 39 of 2013, filed by Police Station Parli Rural in the Court of learned JMFC, Parli Vajinath, District Beed, for the offences punishable under Sections 420, 406, 465, 467, 468, 471 r/w. 34 of the Indian Penal Code 1860 (I.P.C. for the sake of brevity), and under Section 3(i)(iv) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are praying for quashing and setting aside Crime No. 115 of 2012, registered against them on 12.9.2012 in the said police station and the consequent charge sheet. Initially, the application came to be filed jointly by applicant Nos. 1 to 7 who are accused, alongwith respondent No. 2 Saheb Govind Kamble - the informant at whose instance Crime No. 115 of 2012 came to be registered at Police Station. Parli-Rural, District Beed. Subsequently, on request of the parties, applicant No. 8/ informant, is permitted to be transposed as respondent No. 2.

2. The facts resulting in registration of crime in question against the applicants

are thus:--

"[a] Respondent No. 2/informant Saheb is a person belonging to Scheduled Caste "Mang" and he is resident of village Belamba, in Taluka Parli Vajinath of District Beed. Land admeasuring 4 acres and 9 Gunthas came to be allotted to him prior to 25 to 30 years. As per his version in the FIR, neighbouring agriculturists were harassing him by adopting various tactics and, therefore, he decided to sale the said agricultural field and to purchase another one. Applicant No. 4 - Fulchand, therefore, gave a proposal to him to sale his agricultural land to Fulchand and in consideration Fulchand agreed that he will purchase 6 acres of agricultural land for respondent No. 2/informant - Saheb. As per the case of the prosecution, respondent No. 2/informant Saheb agreed to this proposal and applicant No. 3 - Jeevraj, who was working as Talathi managed to get the permission of the Collector, Beed for sale of land of informant/respondent No. 2 - Saheb. Accordingly, sale deed of the said land in favour of applicant No. 4 - Fulchand came to be executed by informant/respondent No. 2 in favour of the applicant No. 1 Satish Sanap, who happened to be the brother in law of the applicant No. 2 Jeevraj. As a consideration, applicant No. 5 Manik executed sale deed of the field in Gat No. 193 in favour of the informant/respondent No. 2 - Saheb on 28.2.2005. It was subsequently revealed that applicant No. 7 Eknath, Talathi, created false 7 x 12 extract of the said Gat No. 193 by fraudulently removing mutation entries and encumbrances on the said land and informant/respondent No. 2 came to be cheated in this manner. Upon protest by informant/respondent No. 2 - Saheb, applicant/accused agreed to return the agricultural field of informant/respondent No. 2 -- Saheb but they have failed to honour that promise.

[b] With these averments, contending that informant - Saheb came to be cheated by applicants by getting his land transferred in favour of applicant No. 1 Satish Sanap, informant/respondent No. 2 - Saheb lodged FIR on 12.9.2012 which resulted in registration of Crime No. 1151 of 2012 against the applicants. Upon investigation, charge sheet came to be filed against them in the court of learned J.M.F.C. Parli Vajinath, District Beed. Applicants are praying for quashing and setting aside this criminal proceeding pending against them."

3. It is contended by learned counsel appearing for the applicants as well as informant/respondent No. 2 - Saheb, that the parties have amicably settled the inter-se dispute and they are now peacefully residing and, therefore, there is no propriety in continuing the criminal proceeding pending against applicants at the instance of informant/respondent No. 2 - Saheb. According to the parties, they have settled the matter which is predominantly of a civil nature and executed settlement deed. The said settlement deed is annexed with the application as Exhibit A. As such, both the parties are praying for quashing the criminal proceedings. We have also heard the learned APP who contended that suitable orders may be passed in the interest of justice.

4. True it is that only offences punishable under Section 406 and 420 of IPC are

compoundable, whereas, rest of the offences alleged against the applicants, are not compoundable but, in non-compoundable offences, power of High court under Section 482 of the Cr.P.C. to quash the criminal proceeding has been duly recognized in catena of judgments of the Honourable Apex court.

5. We have carefully perused the settlement deed at Exhibit A, executed by applicants as well as informant/respondent No. 2 Saheb and his son Sunil Kamble. Both the parties have agreed in terms of this settlement deed that they are canceling the registered sale deed transferring the field admeasuring 4 Acres and 9 Gunthas from Gat No. 189, Survey No. 21, which was previously owned by informant/respondent No. 2, and which came to be transferred by sale in favour of the applicant No. 1 Satish Sanap. In this way, parties have agreed to re-transfer the field in question to informant/respondent No. 2 -Saheb. The settlement deed shows that the registered sale deed bearing No. 1013 of 2005 and 4045 of 2005, are being cancelled and will not be binding on the parties. It is further agreed that possession of the field in question shall be given to informant/respondent No. 2 - Saheb Kamble at the time of verification.

6. Under orders of this Court, the parties have appeared before the Registrar (Judicial) for the purpose of verification and identification. Accordingly, this court has received report of the Registrar (Judicial) on 5.1.2014, regarding identification of parties. Said report is taken on record and marked "X".

7. Today, all applicants as well as respondent No. 2/informant Saheb are present before the court. Their respective counsel have duly identified them. Upon being questioned, informant/respondent No. 2 Saheb Kamble has reported this court that the matter is amicably settled and he has received possession of his agricultural field in Gat No. 486 admeasuring 4 Acres and 9 Gunthas situated at Mauja Belamba from applicants on 24.12.2014. Both the parties have produced possession receipt which shows that the said field is given in possession of informant/respondent No. 2 Saheb Kamble, on 24.12.2014. The possession receipt is taken on record and marked as Exhibit "X-I"

8. We have also verified the compromise from applicants and respondent No. 2. We have satisfied ourselves that the compromise entered into between the parties is without any coercion, undue influence and misrepresentation and on free will of the parties. We accept the same.

9. Now, let us examine, whether the criminal proceedings initiated against applicants by charge sheet No. 115/2012, needs to be quashed and set aside. We have already set out in detail the allegations made by informant/respondent No. 2 against the applicants in FIR lodged by him on 12.9.2012. Informant/respondent No. 2 never averred that the applicants in any manner harassed him while cultivating the agricultural fields. He never reported in the FIR that those were the applicants who used to cause loss to his agricultural produce, which prompted him to sale his agricultural field. It appears that because of harassment by other persons having agricultural land in the vicinity of the

agricultural land of the informant/respondent No. 2, he has decided to sale the same and accepted the proposal of applicant No. 4 Fulchand Dabkar. He transferred his agricultural land by executing sale deed in favour of applicant No. 1 Satish, after getting due permission from the Collector, Beed and in turn, applicant No. 5 Fulchand Dabkar, has executed sale deed of the agricultural field in favour of informant/respondent No. 2. Ultimately, it was found that the 7 x 12 extract of the agricultural field transferred in favour of informant/respondent No. 2 was incorrect. It is thus clear that, this is a criminal case having overwhelmingly and predominantly civil flavour. Wrong alleged by the informant is of private nature in connection with commercial transaction. Offence alleged against applicants is of private nature. Both the parties, except applicant No. 3 Jivraj, who is working as Tahsildar, are agriculturists without any criminal background.

10. It is seen that there has been reconciliation amongst the parties and they have amicably settled the inter-se dispute. We have seen that their relations have become cordial and they are now living peacefully in the village. The averments in the FIR show that the agricultural field of the informant/respondent No. 2 is adjacent to the agricultural fields of applicants/accused. In this view of the matter, continuation of the criminal proceedings will be an exercise in futility. Considering the compromise entered into between the parties, possibility of conviction of the applicants/accused is remote and bleak. Continuation of criminal trial against them would cause great oppression and prejudice to them. Even the offence punishable under Section 3(1)(iv) of the SC ad ST (Prevention of Atrocities) Act, does not appear to be prima facie made out because, there was exchange of land and that too at the instance of informant/respondent No. 2, but, ultimately the transaction could not be materialized.

11. At this juncture, it is apposite to note the observations of the Honourable Apex Court, in the matter of *Gian Singh Vs. State of Punjab and Another*, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 , wherein, it is held thus:--

"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 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 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."

12. Similarly, in the matter of *Dimpey Gujral and Others Vs. Union Territory Through Administrator, U.T. Chandigarh and Others*, AIR 2013 SC 518 : (2013) CriLJ 520 : (2012) 6 CTC 829 : (2012) 12 JT 80 : (2013) 1 RCR(Criminal) 745 : (2012) 11 SCALE 589 , the Honourable Apex court, has held thus in para 5.

"5. In light of the above observations of this court in *Gian Singh*, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Sections 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

13. This Court in the matter of *Sitaram Madhavrao Wagh and another v. District Superintendent of Police and others* reported in 2014 (1) Bom.C.R. (Cri.) page 1 : [2014 ALL MR (Cri) 1212], in the light of settlement between the parties, has been pleased to quash the charge sheet, wherein, an offence punishable under the SC and ST (Prevention of Atrocities) Act, 1989, was alleged against the

accused.

14. In the light of the reasons set out by us, in the foregoing paragraphs, we are of the considered opinion that the charge-sheet in the instant case, having overwhelmingly and predominantly of civil flavour, needs to be quashed and set aside and, therefore, the following order:-- Criminal application No. 5425 of 2014 is allowed in terms of prayer clause (B). The criminal proceedings initiated against the applicants/accused vide charge-sheet bearing No. 31 of 2013, under Sections 420, 406, 465, 471 r/w Section 34 of IPC and under Section 3(i)(iv) of the SC and ST (Prevention of Atrocities) Act, 1989, vide FIR No. 115 of 2012, lodged by informant/respondent No. 2 Saheb Kamble in the court of learned Judicial Magistrate First Class, Parli Vaijnath, District Beed, is quashed and set aside.