

(2021) 10 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Petition (M) No. 471 Of 2021

Sheetal Rani And Another

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 142

Code Of Criminal Procedure, 1973 — Section 164, 320, 482

Indian Penal Code, 1860 — Section 354D, 354(D), 354(D)(1), 376, 458, 506

Citation : (2021) 10 J&K CK 0030

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : A. P. Singh, Aseem Sawhney

Final Decision : Disposed Of

Judgement

Sindhu Sharma, J

1. This petition under Section 482 of the Cr.PC has been jointly filed by the complainant-Sheetal Rani and the accused-Deepak Singh, who are arrayed as petitioner Nos. 1 and 2 respectively.

2. Briefly stated facts that arises in this petition are that on a written report of Sheetal Rani, an FIR under Section 376 IPC was registered in the Police Station Domana, District Jammu, however after her medical examination and statement was recorded under Section 164-A Cr.PC, offence under Section 376 IPC was dropped and there was addition of offences under Section 354-D/458 and 506 of IPC.

3. However, before further evidence was collected and investigation completed, both the complainant, that is the victim of alleged rape and the accused reached an agreement to drop the criminal proceedings.

4. It was obvious from the statement of the complainant that the offence of rape was never committed on her as she was in relationship with him since long,

however, differences arises between them when petitioner No. 2 started abusing and scolding petitioner No. 1.

5. Both the petitioners have approached this Court to quash the proceedings in view of the settlement arrived at between them. It is admitted fact that the victim in this case claims to be pursuing Ph.D course and is, thus, a literate person. The proceedings are still at a stage of investigation and it is doubtful that whether the police will be able to prove the charges because there is nothing in the report regarding lurking house-trespass by the accused during the night with a preparation to commit the offence.

6. There is no allegation of house trespass by the accused but the allegation of abuse which shows that offence under Section 506 IPC may have been committed, but it is compoundable and also punishable only for two years. However, offences under Section 354(D) of the IPC is not compoundable. So the only question that needs to be answered is whether the offence punishable under this Section is heinous in nature or will be against the public policy to allow the petition and quash the same. Before these questions are answered, it may be perfectly to consider the offence of stalking as defined in Section 354(D). Sub section-1 reads as under:

"(1) Any man who-

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such women; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking....."

7. But in this case, the women is not a stranger as it is her admission that she had a loving relationship with the petitioner No. 2 and this is only after she tried to break the relationship with him, he started following her and begging for her company. Her only grievance against petitioner No. 2 was that she could not stay in relationship with him because he is abusing her and she has also complained of physical assault. Since she was in relationship with petitioner No. 2 for more than two years, so he may have followed her to persuade her to continue the relationship and after some time she realized that it was better to settle the dispute with him and, as such, they have entered into a compromise and resolved their differences.

8. In 'Ramgopal and another V. The State of Madhya Pradesh', Criminal Appeal No. 1489 of 2012 decided on 29.09.2021, the Hon'ble Apex court has held as under:

"11. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of

Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

9. Since the petitioners knew each other, petitioner No. 1 was not stranger to petitioner No. 2 and so the compromise was in the interest of justice and quashing the proceedings would not be an abuse of the process of the law. The offence of stalking in this case is in the nature of private offence and not a serious offence and considering the facts of this case, the compromise arrived at between them is, thus, in the interest of justice.

10. In view of the law laid down in 'State of Madhya Pradesh V. Laxmi Narayan and others', 2019(5) SCC 688', wherein it has been held that:

"15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

11. Similar is the view of the Apex Court in the case of 'Narinder Singh V. State of Punjab and another', 2014(6)SCC 466 vide which the guidelines were framed for accepting the settlement for quashing the proceedings or refusing to accept the settlement with direction to continue with criminal proceeding:

"29.5 While exercising its powers, the High Court is to examine as to whether the

possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

12. Taking into consideration the law laid down by Hon^{ble} the Supreme Court and in view of the facts and circumstances in this case, the continuation of criminal proceedings in these circumstances would be an abuse of process of law. This petition is allowed, accordingly, FIR No. 176/2021 for the offences under sections 354-D/458/506 IPC registered at Police Station Domana are quashed.

13. Disposed of alongwith connected application(s), if any.