

(2011) 11 AHC CK 0386

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 4565 of 2011

Shiva Kant Mishra and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 89

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482

Penal Code, 1860 (IPC) — Section 147, 353, 384, 504, 506

Citation : (2012) 1 ACR 1009 : (2012) 3 Crimes 309

Hon'ble Judges : Sudhir Kumar Saxena, J

Bench : Single Bench

Advocate : Nisar Ahmad, for the Appellant;

Judgement

Sudhir Kumar Saxena, J.—Heard Sri I. B. Singh, learned senior counsel appearing on behalf of the petitioners and learned A.G.A. as well as learned counsel for the opposite party No. 2. This petition has been filed u/s 482, Cr. P.C. for quashing criminal proceedings in Case No. 6818 of 2002, u/s 147/504/506, I.P.C. and Section 3 (1) (x) of the S.C./S.T. Act. The matter was referred to Mediation and Conciliation Centre by Hon"ble Mr. Justice S. K. Singh vide order dated 28.4.2009. It appears from the report of the Mediation Centre that both the parties have settled the dispute and decided not to proceed with the case any further and both the parties have submitted an application in the above case for termination of the entire proceedings in terms of the compromise. Terms of the settlement are being quoted herein below :

(1) "That on the basis of the first information report lodged by the petitioner No. 3 Sri Shailesh Kumar Rai a Case Crime No. 1243 of 2001, under Sections 384, 353, 504 and 506, I.P.C. was registered against the second party in the P. S. Kotwali Lakhimpuri Kheri on 6.12.2001.

(2) That on the basis of first information report, lodged by the second party/respondent No. 2 Sri Lekhram Bharti. Case Crime No. 445 of 2002, under

Sections 147, 504 and 506. I.P.C. and Section 3 (1) (x) S.C./S.T. Act was registered in P.S. Kotwali Kheri, Distt. Lakhimpur Kheri against the first party/petitioners on 14.5.2002.

(3) That first party are the Government servants and the second party is the Sampadak, Hindi Saptahik, Kheri Tiger.

(4) That both the parties have settled their case and have decided not to proceed with the case any further. The cases against each of the party were registered due to some misunderstanding. Both the parties have submitted an application in the above case for termination of the entire proceedings in terms of compromise."

It is specified in para 7 of report of the Mediation Centre that all the disputes and differences in respect of Criminal Misc. Case No. 4076 of 2007 (under Section 482. Cr. P.C.) have been amicably settled by the parties.

2. In the light of the aforesaid settlement, the petition was disposed of by Hon"ble Mr. Justice Alok Kumar Singh vide order dated 27th August, 2009. The said order is quoted hereinbelow :

Learned counsel from both the sides are present. Fortunately, the dispute has been settled between the parties in the Mediation and Conciliation Centre of this Court, as per settlement agreement (Annexure-E)

This petition is disposed of accordingly in terms of compromise."

It is apparent from the above order that petition was disposed of in terms of the compromise which very categorically intended to terminate the criminal proceedings going on between the parties.

3. Sri I. B. Singh, senior advocate, appearing on behalf of the petitioners submits that the dispute having been settled through compromise, the Magistrate was not justified in forcing the presence of petitioners enabling him to commit the case. He has relied upon a decision of this Court in Writ Petition No. 1509 (M/S) of 2009, Rohit Ahuja v. Additional Principal Judge, Family Court, Lucknow and another.

4. Sri R. K. Dwivedi, learned A.G.A. strongly opposed the argument of learned counsel for the petitioner, by saying that the aforesaid Judgment pertains to the civil matter and as such, the judgment which deals with Section 89 of C.P.C. has no application to the present case. He further submits that the Magistrate has no power to pass any order in the matter as the case is triable by Sessions Court, as such, and he had no option but to commit the case to Court of Session.

Argument of A.G.A. has substance. It is true that the offence being exclusively triable by Sessions Court, Magistrate has no authority to discharge the accused persons or pass any order whereby accused would stand acquitted.

5. However, this Court can pass such an order in the interest of justice. The dispute was between Shiv Kant Mishra, Shailesh Kumar Rai and Lakhram Bharti.

This dispute was purely personal in nature. Since parties have settled the matter by way of compromise, no useful purpose would be served by requiring the parties to undergo the ordeal of criminal trial where parties may have to be forced to give false statements as well, in order to escape the clutches of law. In the opinion of the Court, matter being purely personal in nature and parties having buried their disputes amicably, it would be futile exercise to direct the parties to appear, go to jail and then press the compromise before the court below. Magistrate may be justified in taking the ground that it has no power to compound the case which is not compoundable. However, in such a situation, this Court cannot remain silent spectator and perhaps with a view to meet such an eventuality, inherent powers of the Courts have been saved.

6. In the case of Nikhil Merchant Vs. Central Bureau of Investigation and Another, , Hon"ble Apex Court was dealing with the case where the parties have entered into compromise and it was agreed that all the allegations and counter allegations would be withdrawn. In para 31 of the Judgment the Apex Court observed that the continuation of the criminal proceedings after compromise would be a futile exercise. Para 31 of the said judgment is quoted hereinbelow :

On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B. S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

7. In the case of Madan Mohan Abbot Vs. State of Punjab, , Hon"ble Apex Court observed in para 6 of the judgment that the disputes which involved the question of purely personal in nature. Court should ordinarily accept the terms of compromise even in the criminal proceedings. This approach has been found to be common sense approach based on ground realities. Para 6 of the judgment is reproduced hereinbelow. :

We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground realities and bereft of the technicalities of the law.

8. In the case of Manoj Sharma v. State and others, (2008) 16 SCC 1, Hon"ble Apex Court considering the B. S. Joshis" case, 2004 (9) SCC 47 : 2003 (2) ACR 1305 (SC), observed that Section 320, Cr. P.C. does not limit the discretion of the Court u/s 482, Cr. P.C.

9. In para 8 of the said judgment, Hon"ble Apex Court has observed that "it is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of the personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. What we do say that the matter could have been considered by the High Court with greater pragmatism in the fact of the case."

In para 27, Hon"ble Court observed that : "however in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if parties have come to an amicable settlement even though the provisions are not compoundable.

10. From the above, it is apparent that if dispute is akin to civil nature or is purely personal in nature involving no public policy. Court would be justified in quashing criminal proceedings u/s 482, Cr. P.C. even if offences are non-compoundable. Of course, one relevant consideration could be the probabilities of the conviction, apart from saving the valuable time of the Courts. Of course, no hard and fast rule can be laid down in this respect and each case will have to be considered on the facts of the case; as there may be cases though personal in nature but affecting the society at large, having wide ramifications involving morals, values, national interests etc. Therefore, the common sense or pragmatism as advised by Hon"ble Apex Court could be utilized in the peculiar facts and circumstances of the case with a view to prevent the abuse of the process of the Court and in the ends of justice.

11. In view of above, this Court finds that the parties having compromised the dispute. Court having disposed of the writ petition in the light of the compromise, no useful purpose would be served by continuing the prosecution, as such the petition is liable to be allowed.

12. Since purport of the order dated 27th August. 2009 is that criminal proceedings stood terminated, no useful purpose would be served by committing the case to the court of session. Powers u/s 482, Cr. P.C. can always be utilized for giving effect to the orders passed by the Court in the ends of justice. Since, the matter before the Meditation Centre has been amicably settled and that has been accepted by this Court, it will be useless to remand the matter and force the parties to face ordeal of the criminal proceedings. In view of above, the petition u/s 482, Cr. P.C. is allowed and criminal proceedings in Case No. 6818 of 2002, State of U.P. v. Surendra Mishra and others, arising out of Case Crime No. 445 of 2002, under Sections 147, 504, 506, I.P.C. and Section 3 (1) (x) of S.C/ S.T. Act, P.S. Kotwali Sadar, district Lakhimpur Kheri, are hereby quashed.