
(2013) 04 BOM CK 0066

In the Bombay High Court

Case No : Criminal Writ Petition No. 42 of 2013

Shri Pranav Goel

APPELLANT

Vs

State of Goa and Geetesh Naik

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(7), 482
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2013) ALLMR(Cri) 2586

Hon'ble Judges : R.P. Sondurbaldota, J

Bench : Single Bench

Advocate : Rajneesh Naik, for the Appellant; Mahesh Amonkar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sondurbaldota, J.—Rule. Rule returnable forthwith. Shri M. Amonkar, learned Additional Public Prosecutor waives service on behalf of respondent no. 1. Notice to respondent no. 2 is dispensed with for the reasons stated hereinafter. This petition is filed u/s 482 Criminal Procedure Code for quashing of criminal case no. 37/S/2011/B pending in the Court of Judicial Magistrate First Class at Quepem. The petitioner is facing charge for offences punishable u/s 279 and 338 Indian Penal Code. It is a State prosecution.

2. The brief facts of the case are that on 14th January, 2011 an accident occurred at Paddi Bus Stop between two vehicles i.e. the car being driven by the petitioner and the motorcycle being driven by respondent no. 2. A complaint was then filed against the petitioner of driving his car in a rash and negligent manner and dashing it against the motorcycle causing grievous injury to the motorcycle driver. It is the case of the petitioner that he is serving as a sub-lieutenant in Navy and resides at Pune. He had come to Goa on a holiday where the accident described above took place. According to the petitioner it was a pure and simple accident and there was no rashness and negligence on his part in driving the car.

3. It appears that during the pendency of the prosecution the petitioner and respondent no. 2 arrived at settlement. Respondent no. 2 then filed application dated 25th October, 2012 before the Judicial Magistrate First class at Quepem for compounding of the case. The petitioner also on the same day filed an application that one of the offences in the proceedings i.e. the offence punishable u/s 338 Indian Penal Code was compoundable and once that offence is compounded nothing would survive for trial of the offence punishable u/s 279 Indian Penal Code. The trial Court rejected the application on the ground that the offence u/s 279 is not compoundable and that the trial Court does not have powers of quashing the proceedings u/s 482 Criminal Procedure Code (herein after referred to as "CRPC").

4. Mr. R. Naik, the learned Counsel for the petitioner submits that once the offence u/s 338 Indian Penal Code is compounded nothing remains in the trial of the offence punishable u/s 279 Indian Penal Code. The offence punishable u/s 338 Indian Penal Code is causing grievous hurt by act endangering life or personal safety of others. This offence is compoundable by the person to whom hurt is caused with the permission of the Court. The offence punishable u/s 279 Indian Penal Code is of rash driving or riding on a public way. Mr. Naik submits that the common ingredient of the two offences is commission of the act endangering life or personal safety of others. If this act gets condoned by compounding of the offence punishable u/s 338 Indian Penal Code there can be no conviction for the offence punishable u/s 279 Indian Penal Code. In any case he submits that considering the facts and circumstances of the case this Court should exercise its inherent powers u/s 482 CRPC and quash the proceedings in view of compounding of one of the offences. In justification of his submission for exercise of inherent powers Mr. Naik relies upon decision of the Apex Court in *Gian Singh Vs. State of Punjab and Another*, . By the decision cited the three Judges Bench of the Apex Court has considered the reference made to the larger bench on correctness of the decisions of the Apex Court in *B.S. Joshi and Others Vs. State of Haryana and Another*, , *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, and *Manoj Sharma Vs. State and Others*, on exercise of the powers by the High Court u/s 482 CRPC for quashing of criminal proceedings on the ground of actual compounding the offences that are non-compoundable vide Section 320(7) CRPC. The reference had been made in view of the opinion expressed by the Division Bench of the Apex Court hearing SLP in *Gian Singh v/s. State of Punjab* (supra) that non-compoundable offences cannot be permitted to be compounded by the Court whether directly or indirectly. In other words, something which cannot be done directly cannot be done indirectly. If an offence is not compoundable u/s 320 CRPC, the proceedings involving the offence cannot be quashed u/s 482 CRPC on the ground of compounding. The Apex Court answered the reference stating that the power of the High Court in quashing the criminal proceedings or FIR or complaint in exercise of its inherent jurisdiction is a distinct and different from the power given to a criminal Court for compounding the offence u/s 320 CRPC. The inherent power is of wide plenitude

with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such powers viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of process of any Court. In what cases the power to quash the criminal proceedings etc. may be exercised where the offender and the victim have settled their dispute would depend upon the facts and circumstances of each case and no category can be prescribed. The Apex Court then proceeded to observe that while exercising such power the High Court must have due regard to (i) the nature and gravity of the crime, (ii) the offences are not private in nature and have a serious impact on society, (iii) the offences are not by public servants while working in that capacity, (iv) the criminal case has overwhelmingly and predominantly civil flavour or the family disputes and (v) because of the compromise between the offender and the victim the possibility of conviction is remote and bleak and where continuation of criminal case would put the accused to great oppression and prejudice.

5. In the case on hand, it is patent from the record of the criminal proceedings that the petitioner and respondent no. 2 have compounded the offence punishable u/s 338 Indian Penal Code. There is an application filed by respondent no. 2 stating so. Mr. Amonkar, the learned Additional Public Prosecutor does not dispute that respondent no. 2 has filed the application for compounding of the offence. I have also perused the two applications filed by the petitioner and respondent no. 2 before the trial court. In view of the application filed by respondent no. 2, in my opinion, there is no need to serve separate notice upon respondent no. 2 or give any hearing to him for quashing of the proceedings initiated by the State. In view of the settlement arrived at between the petitioner and respondent no. 2, in the offence punishable u/s 338 Indian Penal Code, the possibility of conviction of the petitioner for the offence punishable u/s 279 Indian Penal Code is remote and bleak. As has been argued by Mr. Naik, the essential ingredient of commission of the act endangering life or personal safety of others would not get established. In such circumstances, continuation of the proceedings against the petitioner who is a sub-lieutenant in Navy would cause great prejudice and extreme injustice to him. Therefore, in my opinion, to secure the ends of justice it would be appropriate that the criminal proceedings are put to an end by quashing the same by this Court in its exercise u/s 482 CRPC. For the reasons stated above the petition is allowed. The rule is made absolute in terms of prayer clause "A".