
(2016) 06 BOM CK 0043

In the Bombay High Court

Case No : Criminal Appeal No. 344 of 2003 with Criminal Application No. 1932 of 2016 and Criminal Application No. 2941 of 2016

Sk. Bashir Sk.Shabhir

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 435, 436

Citation : (2016) ALLMRCri 3037 : (2016) 4 BomCR(Cri) 523

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Pawar H.F. h/f Shri Kapadia A.H., Advocates, for the Appellant;
Shri Bhagat N.T., APP, Shri Deshmukh H.D., Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ravindra V. Ghuge, J.(Oral) - The complainants and the accused, who have been convicted for having committed offences punishable under Sections 435 and 436 of the Indian Penal Code, have placed on record a joint compromise document dated 14.6.2016 for compounding of the offence, along with the affidavits of the concerned persons.

2. It is jointly submitted by the learned Advocates for the appellants and the complainants that though the offence held to have been committed is not a compoundable offence, this Court could exercise it's inherent powers under Section 482 of the Code of Criminal Procedure and pass appropriate orders keeping in view the ratio laid down by the Honourable Supreme Court in the matter of M/s Pepsi Foods Limited and another v. Special Judicial Magistrate and others [AIR 1998 SC 128] and the judgment of the Honourable Apex Court (3 Judges Bench) in the matter of Gian Singh v. State of Punjab [(2012) 10 SCC 303].

3. The learned APP appearing on behalf of the State has opposed the said

application for the reason that as the offences proved are not compoundable, this Court need not exercise its jurisdiction under Section 482. He prays that the application, therefore, be rejected.

4. I have considered the submissions of the learned Advocates and I have gone through the appeal paper book. I have also gone through the evidence recorded and the impugned judgment dated 29.4.2003, delivered by the learned Additional Sessions Judge, Aurangabad by which, the accused were handed down the order of conviction and were sentenced to suffer rigorous imprisonment for a period of two months.

5. The Honourable Supreme Court in the matter of Gian Singh (supra), after considering the law has concluded in paragraph Nos. 54 to 60 as under:-

"54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power Under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court Under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers Under Section 482. No precise and inflexible guidelines can also be provided.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court Under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding

or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

59. B.S. Joshi (2003) 4 SCC 675, Nikhil Merchant (2008) 9 SCC 677, Manoj Sharma(2008) 16 SCC 1 and Shiji alias Pappu do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power Under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court Under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, (2003) 4 SCC 675, Nikhil Merchant, (2008) 9 SCC 677, Manoj Sharma, (2008) 16 SCC 1 and Shiji alias Pappu, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence Under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power Under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

60. We find no incongruity in the above principle of law and the decisions of this Court in *Simrikhia*, (1990) 2 SCC 437, *Dharampal*, 1993 Cri. L.J. 1049, *Arun Shankar Shukla* AIR 1999 SC 2554, *Ishwar Singh*, (2008) 15 SCC 667, *Rumi Dhar (Smt.)*. (2009) 6 SCC 364 and *Ashok Sadarangani*. The principle propounded in *Simrikhia* (1990) 2 SCC 437 that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In *Dharampal*, 1993 Cri. L.J. 1049, the Court observed the same thing that the inherent powers Under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Similar statement of law is made in *Arun Shankar Shukla*, AIR 1999 SC 2554. In *Ishwar Singh*, (2008) 15 SCC 667, the accused was alleged to have committed an offence punishable Under Section 307, Indian Penal Code and with reference to Section 320 of the Code, it was held that the offence punishable Under Section 307 Indian Penal Code was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In *Rumi Dhar (Smt.)* although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences Under Section 120-B/420/467/468/471 of the Indian Penal Code along with the bank officers who were being prosecuted Under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. *Ashok Sadarangani* was again a case where the accused persons were charged of having committed offences Under Sections 120-B, 465, 467, 468 and 471, Indian Penal Code and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilised such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in *B.S. Joshi* (2003) 4 SCC 675, *Nikhil Merchant*, (2008) 9 SCC 677 and *Manoj Sharma*, (2008) 16 SCC 1 and it was held that *B.S. Joshi*, (2003) 4 SCC 675, and *Nikhil Merchant*, (2008) 9 SCC 677 dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in *Ashok Sadarangani* was more on the criminal intent than on a civil aspect. The decision in *Ashok Sadarangani* supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing."

6. It is thus the law that with regard to crimes which do not have a serious impact or endanger the public as well as the society, this Court can exercise its powers under Section 482 and permit the compounding of the offence. In the event, the offence is not serious as like an offence of murder, rape, dacoity or

under the Prevention of Corruption Act or of similar nature, the compounding of offences is permissible.

7. Considering the law, it would be necessary to scrutinise the offence committed by the accused and the circumstances in which it has been so committed. In the light of the evidence recorded before the trial Court, which has been discussed by the learned Additional Sessions Judge in the impugned judgment, it reveals that the accused had assembled at a Dhaba called "Deogiri Dhaba". They had ordered food and were waiting for the food to be cooked and served. The son of the owner of the Dhaba, after cooking the food, served it to the accused.

8. It appears that the accused were angry on account of the delay caused in the serving of the food and as a consequence of which, they started abusing PW 3. Father of PW 3 rushed to the scene and thereafter the accused assaulted PW 3 with slaps, kicks and stick blows. Thereafter, these accused persons left the Dhaba and returned after some time and set a heap of fodder kept behind the Dhaba / hotel premises on fire. As a consequence, some of the chairs, cots, blankets and furniture caught fire.

9. The facts of this case, therefore, indicate that though the accused are guilty of committing the offence for which they have been convicted, the said offence would not fall within the ambit of a "serious crime" or "heinous crime".

10. As such, in my view, the ratio laid down by the Honourable Supreme Court in the case of Gian Singh (supra) would apply to this case.

11. In the light of the above, considering the facts of the case, law applicable, and the compromise terms, which is marked as Exhibit "X" for identification, the leave sought by the applicants in Exhibit "X" is allowed and the parties are permitted to compound the offence. Consequentially, the conviction and the sentence stand set aside and the appeal is, therefore, allowed in the light of Exhibit "X".

12. Pending Criminal Applications, therefore, do not survive and stand disposed off.