

(2014) 12 BOM CK 0094

In the Bombay High Court

Case No : Criminal Application No. 2590 of 2014

Syeda Badar Jahan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 320, 34, 406, 420

Citation : (2015) ALLMR(Cri) 279 : (2015) 1 BomCR(Cri) 834

Hon'ble Judges : S.S. Shinde, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : Sabahut Tarique Kazi, Advocate for the Appellant; V.D. Godbharle, Advocate and Mujtaba Gulam Mustafa, Advocate for the Respondent

Judgement

S.S. Shinde, J.—This application has been filed with the following main prayer:

"(C) This criminal application may kindly be allowed by quashing and setting aside the impugned F.I.R. bearing Crime No.I-42/2014 dated 17/2/2014 registered with City Chowk Police Station, Aurangabad for offences punishable under Section 420, 406, 468, 471, read with 34 of I.P.C."

2. Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

3. This Court, by order dated 22nd August, 2014 referred the parties to the mediator on their willingness to settle the dispute before the mediator. It appears that the parties appeared before the mediator and agreed for settlement on certain terms and conditions. The mediator's report dated 4th December, 2014 with terms of compromise agreed between the parties and duly verified before the Chief Judicial Magistrate, Aurangabad has been placed on record.

4. The respondent No. 2 filed the affidavit-in-reply on 21st August, 2014. In pursuance to the compromise entered into between the applicant and the respondent No. 2 before the mediator, additional affidavit on behalf of the applicant and respondent No. 2 has been filed on 5th December, 2014. It is stated in the said additional affidavit that the parties have now amicably resolved

their dispute. Both the parties have agreed to abide by the terms of the compromise purshis, which are along with mediator's report and as per paragraphs 9 and 14 of the said compromise terms, the parties have agreed to settle the cases (civil as well as criminal) filed against each other. It is further stated that the impugned FIR, which is subject matter of the application, was also a result of family discord and in view of the full and final settlement between the parties and in view of the fact that, the parties are blood relatives, it is prayed that the F.I.R. bearing Crime No.I-42/2014 dated 17/2/2014 registered with City Chowk Police Station, Aurangabad for offences punishable under Section 420, 406, 468, 471, read with 34 of I.P.C. and further proceedings arising out of it, may be quashed and set aside. The parties have placed reliance on the judgment in case of Gian Singh Vs. State of Punjab and Another, wherein, the Apex Court observed that the High Court while exercising powers under section 482 of the Code of Criminal Procedure, must have due regard to the nature and gravity of the crime and the same has to be exercised in accordance with the guideline en-grafted in such power viz, (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court.

5. We have carefully perused the entire material placed on record and we are of the opinion that the dispute between the parties appears to be private in nature. The applicant and complainant are relatives. The main dispute appears to be about the property. The applicant and respondent No. 2 are present before this Court. Both of them are identified by their respective advocates. They further stated that the agreement / compromise is not executed under duress or compulsion or out of pressure. The compromise agreement appears to be voluntarily. The agreement is also verified before the Chief Judicial Magistrate. In addition to that, an additional affidavit on behalf of the applicant and respondent No. 2 has also been filed before this Court.

6. In order to find support to contention of the applicants that the case is fit for exercise of powers u/s 482 of Cr.P.C. in favour of applicants, the learned Counsel has relied upon the decision of the Apex Court in the case of Narinder Singh and Others Vs. State of Punjab and Another, and Dimpley Gujral and Others Vs. Union Territory Through Administrator, U.T. Chandigarh and Others, In our view, the principles laid down in both the cases have square applicability to facts of the present case. In the case of Narinder Singh (supra), the Apex Court has observed in para 31 as under:

"31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of

the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the

settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

7. In that view of the matter, taking overall view in the light of the decision of the Apex Court in case of Gian Singh (supra), and subsequent judgment in the case of Dimpey Gujral and Others Vs. Union Territory Through Administrator, U.T. Chandigarh and Others, , and in case of Narinder Singh (supra), we are of the considered view that, when the parties have amicably settled the dispute, no fruitful purpose would be served by continuing the proceedings / investigation any further, based upon the F.I.R. bearing Crime No.1- 42/2014 dated 17/2/2014 registered with City Chowk Police Station, Aurangabad for offences punishable under Section 420, 406, 468, 471, read with 34 of I.P.C., when the complainant is not going to support the allegations in the complaint. The application, therefore, deserves to be allowed.

8. In the result, application is allowed in terms of prayer clause (C) and stands disposed of. Rule is made absolute, accordingly.