
(2014) 12 BOM CK 0218

In the Bombay High Court

Case No : Criminal Writ Petition No. 122 of 2014

Tulshidas Gad

APPELLANT

Vs

Public Prosecutor and Others

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 353, 448, 504, 506

Citation : (2015) ALLMR(Cri) 1729 : (2015) 1 BomCR(Cri) 570

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Arun Bras De Sa, Advocates for the Appellant; M. Gomes Pinto, A.P.P, Advocates for the Respondent

Judgement

U.V. Bakre, J.—Heard Mr. De Sa, learned Counsel appearing on behalf of the petitioner, Ms. Pinto, learned Additional Public Prosecutor for respondents No. 1 and 2 and Mr. Kerkar, learned Counsel appearing on behalf of respondent No. 3. Rule. Rule is made returnable forthwith. By consent, heard forthwith.

2. By this petition, the petitioner has prayed for quashing and setting aside process/charge-sheet in Criminal Case No. 42/S/I.P.C./2014/A on the file of Judicial Magistrate, First Class, at Ponda (J.M.F.C., for short).

3. Respondent No. 3 had filed a complaint against the petitioner with Ponda Police and Crime No. 370/2013 was registered for offences under sections 448, 504, 506 and 353 of I.P.C. read with section 34 of I.P.C. which culminated into filing of charge-sheet before the learned J.M.F.C. which was registered as Criminal Case No. 42/S/I.P.C./2014/A.

4. Learned Counsel for the petitioner and respondent No. 3 submitted that the parties have amicably settled the matter but since the offence under section 353 of I.P.C. is not compoundable, the present petition has been filed. Today, respondent No. 3 has filed affidavit-in-reply wherein he has submitted that the subject-matter of dispute in the said Criminal Case No. 42/S/I.P.C./2014/A is

basically private and personal in nature and the parties have resolved their entire dispute and have no claim either civil and/or criminal as regards the same and, therefore, the respondent No. 3 has no objection to this Court granting reliefs as prayed by the petitioner in the present writ petition i.e. quashing the charge-sheet in Criminal Case No. 42/S/I.P.C./2014/A. The petitioner as well as the respondent are personally present before this Court and they have submitted that the matter has been amicably settled between themselves.

5. Learned Counsel for the petitioner and the respondent No. 3 have submitted that in view of the settlement between them, the writ petition be allowed and the said criminal proceedings be quashed and set aside. Learned Additional Public Prosecutor for the State does not have any objection for the same. Parties have relied upon the judgment of the Hon''ble Supreme Court in the case of *Gian Singh Vs. State of Punjab and Another*, .

6. In the case of "*Gian Singh*" (supra), the Hon''ble Supreme Court has observed thus:

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the 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 wrongdoing that seriously endangers and threatens the well-being of the 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 the permission of the Court In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under I.P.C. or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the 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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the 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."

7. In my opinion, continuation of said 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. Considering the above, the joint request made by the petitioner and respondent No. 3 deserves to be accepted. Hence, writ petition is allowed.

(i) Criminal Case No. 42/S/I.P.C./2014/A pending before the learned J.M.F.C. at Ponda for offences punishable under sections 448, 504, 506, 353 read with section 34 of I.P.C. stands quashed and set aside, qua the petitioner.

(ii) Rule is made absolute in the aforesaid terms. No order as to costs.