
(2019) 03 MP CK 0168

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 19094 Of 2018

Ummed Singh And Another

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 307, 420, 467, 468

Citation : (2019) 03 MP CK 0168

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Sanjay Gupta, Vikrant Sharma, Ghanshyam Mangal

Final Decision : Dismissed

Judgement

This application under Section 482 of Cr.P.C. has been filed for quashment of the FIR in Crime No.439/2013 registered by Police Station Huzrat Kotwali, District Gwalior as well as Sessions Trial No.292/2015 pending in the Court of Third Additional Sessions Judge, Gwalior on the ground of compromise.

The necessary facts for disposal of the present application in short are that the complainant lodged a FIR on 05/12/2013 alleging that on 15/06/2010 he had entered into an agreement to purchase 20.247 hectare of land belonging to the applicants. The agreement to sell is the part of case diary. According to this agreement to sell, in the first paragraph, various lands including survey no.29/2, area 2.09 hectare and survey no.30/2, area 0.836 hectare have been mentioned and after mentioning all the survey numbers, it was mentioned that the total area of thirty six survey numbers comes to 20.274 hectare which "exclusively belongs to the applicants" and it was specifically mentioned that the land in question is free from all encumbrances and is not mortgaged with any Bank or financial institution. It was further mentioned that out of this 20.247 hectare of land, the applicants agreed to sell half of land i.e. 10.123 hectare to the complainant at the rate of Rs.1,90,000/-per bigha and an amount of Rs.25 lacs

has been paid by way of advance and the remaining amount shall be payable at the time of execution of sale deed. It was further mentioned that the sale deed shall be executed within a period of nine months from the date of execution of agreement to sell. The consequences of non-execution of sale deed were also mentioned and it was mentioned that in case of failure of the applicants to execute the sale deed, the complainant shall be at liberty to get the sale deed executed through the Court and the applicants or their legal representatives shall not have any objection to it and they will be responsible and liable to bear the cost of lis. It was also mentioned that if any tax or any liability is found against the property in dispute, then it will be the duty of the applicants to discharge that liability. It is mentioned in the FIR that survey nos.29/2 and 30/2 were the lands situated in the front of the land in dispute and if it was told to the complainant that the respondents are not the owners of survey nos.29/2 and 30/2, then they would not have entered into an agreement to purchase and would not have made the payment of Rs.25 lacs. Thus, the FIR was lodged alleging that by misrepresenting that the applicants are the owners of survey nos.29/2 and 30/2, they induced the complainant to enter into an agreement to purchase half of 20.274 hectare land and to make payment of Rs.25 lacs as an advance.

It is submitted by the counsel for the applicants that the respondent no.2 has compromised the matter with the applicants and, therefore, the FIR registered against the applicants may be quashed.

It appears that when the trial court did not frame the charge under Sections 467 and 468 of IPC, respondent no.2 had filed a Criminal Revision No.834/2016 for framing additional charges. Similarly, the applicant had also filed a petition under Section 482 of Cr.P.C., which was registered as M.Cr.C. No.337/2014. The revision filed by the respondent no.2 was allowed and it was directed that he charge under Sections 467 and 468 of IPC is also liable to be framed, whereas the application filed by the applicants under Section 482 of Cr.P.C. for quashment of the proceedings was dismissed on merits. Thus, on merits, it has already been considered that there is a prima faice material to prosecute the applicant for offence under Sections 420, 467 and 468 of IPC. Earlier the parties were fighting from tooth to nail, however, the counsel for the complainant has not stated that as to what persuaded the complainant to compromise the matter with the applicants. The compromise means where the parties have forgiven each other, but it does not mean that a party can be allowed to take advantage of the orders of the Court by playing dominant role in negotiating with the applicants. The civil liabilities should be decided in civil suits and not by taking advantage of the orders of the Court.

Be that as it may.

It is a case where the agreement to sale was executed in respect of a land which was not in the ownership of the applicant. Thus, it is clear that the applicant had tried to sell the land of third person without any authority. Not only the applicant

has tried to cheat respondent no.2, but he has also tried to sell the land of one Smt. Sajju W/o Late Chhakkuram Adiwasi, R/o Pipariya Chak, Police Station Chinor, District Gwalior.

The Supreme Court in the case of Gian Singh v. State of Punjab reported in (2012) 10 SCC 303 and Narinder Singh & Ors. v. State of Punjab & Anr. reported in (2014) 6 SCC 466, has held that where the offence is against the society, then the prosecution should not be quashed on the ground of compromise.

Furthermore, the counsel for the parties are not in a position to inform this Court about the stage of the trial. The Supreme Court in the case of State of M.P. Vs. Laxmi Narayan and others passed in Cr.A. No.349 of 2019 by judgment dated 5/3/2019 has held as under:-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in

the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

(Underline applied)

Under these circumstances, this Court is of the considered opinion that it is not a fit case for quashment of Sessions Trial on the ground of compromise.

Accordingly, this petition fails and is hereby dismissed.