
(2014) 12 BOM CK 0138

In the Bombay High Court

Case No : Criminal Application No. 4823 of 2014

Vilas

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 173, 307

Citation : (2015) ALLMR(Cri) 273

Hon'ble Judges : S.S. Shinde, J;N.W. Sambre, J

Bench : Division Bench

Advocate : N.L. Chaudhari, Advocate for the Appellant; D.V. Tele, APP, Advocate for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule returnable forthwith with the consent of the parties and heard finally.

2. This Application is filed with following prayer:-

B] The Criminal proceedings bearing Sessions Case No. 137/2011, arising out of C.R. No. 87/2011, registered with Shindkheda Police Station, Dhule, Dist. Dhule for offences U/s. 307, 326, 504, 506 of Indian Penal Code and Charge sheet No. 80/2011, may kindly be quashed and set aside.

3. The applicant, injured witness namely Kailas Barku Patil and the original complainant have filed affidavit jointly. The said affidavit supporting the averments of compromise is sworn in by the parties before the Section Officer of the registry of the High Court. The parties appeared before the Registrar [Judicial]. They were identified by their respective advocates. They admitted the correctness of the contents of affidavit sworn in by them. The complainant and injured both have admitted that, they have amicably settled the dispute out of the Court and the complainant and injured admitted their signatures appearing on their affidavits. The report of the Registrar [Judicial] of the High Court is on record.

4. In the affidavit filed jointly, it is stated that, there was previous rivalry in both the groups and as such complaint has been lodged. However, in the said alleged incident dated 29.07.2011, actually there was no actual use of weapons nor there were any grievous injuries caused to any of the parties. The complaint was registered merely due to misunderstanding and in a state of anger, only because of previous political rivalry. It is further stated that, the parties are residents of same locality and being neighbours, both the parties have to face each other all the while and both the parties need co-operation and help of each other. That, after the alleged incident all of them have developed cordial relations amongst themselves. As all the villagers, senior citizens of the village had decided to make the village as dispute free village [Tanta Mukta Village], amicable settlement has been brought amongst them. Also they have come to a conclusion of settling the dispute amongst themselves. In view of and in furtherance of the said amicable settlement all of them have decided to give-up the disputes amongst themselves and to stay peacefully without any grudge against each other.

5. The parties have also assured through affidavit that, in future they all will reside peacefully and amicably, and they all assure that, they will not quarrel or create any dispute amongst themselves henceforth. The complainant has stated that, he has no any grievance or objections if the Criminal proceedings bearing Sessions Case No. 137/2011, arising out of C.R. No. 87/2011, [Charge sheet No. 80/2011] registered with Shindkheda Police Station, Dhule is quashed and set aside.

6. Upon careful reading of the affidavit at Exhibit- C Page Nos. 25 and 26 of the Application, sworn by the complainant before the Notary at Dhule and also the affidavit jointly filed by the applicants, complainant and injured witness, in our opinion, no fruitful purpose would be served by continuing further proceedings based upon C.R. No. 87/2011. Since the complainant or the injured witness are not going to support the allegations in the complaint and continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution, and therefore, in our considered view, the application deserves to be allowed.

7. The Hon'ble Supreme Court in the case of Gian Singh Vs. State of Punjab and Another, , observed, thus:

"61. ..The power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have

due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot befittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact of society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

Yet in another Judgment, the Hon'ble Supreme Court in the case of Narinder Singh and Others Vs. State of Punjab and Another, observed, thus:

"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."

The Supreme Court in the case of *Dimpey Gujral and Others Vs. Union Territory Through Administrator, U.T. Chandigarh and Others*, has held as under :-

"5. In light of the above observations of this court in *Gian Singh*, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Sections 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

8. Therefore, taking over all view of the matter, in the facts of this case, upon considering the material placed on record in the light of above mentioned authoritative pronouncements of the Hon"ble Supreme Court, we are of the considered view that, the application deserves to be allowed. In the result, application is allowed in terms of prayer clause-B. Rule made absolute in above terms. Application stands disposed of accordingly.