

Court No. - 85

Case :- APPLICATION U/S 482 No. - 4392 of 2016

Applicant :- Rajiv Kumar

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Ashok Kumar, Sachin Kanaujiya

Counsel for Opposite Party :- G.A., Chandra Bhan Dubey

Hon'ble Mrs. Manju Rani Chauhan, J.

Mr. Chandra Bhan Dubey, learned for the opposite party no.2 has not appeared even in the revised call.

Heard Mr. Sachin Kanaujiya, learned counsel for the applicant, Mr. Amit Singh Chauhan, learned AGA for the State and perused the records.

This application under Section 482 Cr.P.C. has been filed to quash the charge sheet dated 25.06.2015 and the cognizance order dated 30.07.2015 as well as the entire proceedings of Criminal Case No. 36 of 2015 (State Vs. Rajiv Kumar), arising out of Case Crime No.118 of 2015, under Sections 363, 366 and 376 I.P.C. and Section 3/4 of POCSO Act, P.S. Doghat, District-Baghpat, Additional District and Sessions Judge, Baghpat.

On 13.09.2022, the following order was passed:-

"As per office report dated 13.09.2022, notice has been personally served upon opposite party no.2.

Learned counsel for the applicant submits that the applicant has married opposite party no.3 and they are living a happy married life.

An FIR has been lodged by opposite party no.2 (maternal uncle of opposite party no.3) who is trying to ruin the married life of the parties by not appearing before the Court. In such a situation and in view of various judgments of the Hon'ble Apex Court, continuance of proceedings in the present case would amount to abuse of process of law.

In view of the above, let the applicant as well as opposite party no.3 be present before the Court on the next date.

List on 21.09.2022.

Interim order is extended till the next date of listing."

In compliance of the order of the Court dated 13.09.2022, the applicant, namely, Rajiv Kumar and the opposite party no.3, namely, Upasana are present alongwith her son, who is four and half years old, in the Court today, who have been identified and

signatures have also been attested by learned counsel for the applicant.

The rejoinder affidavit has been filed by Mr. Sachin Kanaujia, learned counsel for the applicant, in which, deponent is Upasana, who is wife of applicant.

On query being raised, the opposite party no.3, namely, Upasana has stated that she has married the applicant out of her own sweet will and is living happy married life. Out of their wedlock, they are blessed with a male child, who is presently four and half years old. As per her date of birth, she was nearly 17 and half years old at the time of marriage. She has also stated that her in-laws have accepted their marriage and she is staying happily with them. She has also stated that FIR has been lodged by her maternal uncle, i.e. opposite party no.2, who is trying to ruin the married life of Upasana. She has further stated that she has entered into compromise and deposed before this Court, out of her free will, consent and without any external pressure, coercion or threat of any kind.

Learned counsel for the applicants submits that on account of compromise entered into between the parties concerned, all disputes between them have come to an end, and therefore, further proceedings against the applicant in the aforesaid case is liable to be quashed by this Court. In support of his contention, learned counsel for the applicant has relied upon the judgment of this Apex Court in the case of ***Mafat Lal and another vs. State of Rajasthan report on 2022 LawSuit(SC) 463*** and also relied upon the judgment of this Court in the case of ***Gufraan Shaikh @ Gani Munawwar vs. State of U.P. and another*** decided on 28.07.2022 passed in Application U/s 482 No.10258 of 2021.

Learned A.G.A. does not dispute the aforesaid fact and submitted at the Bar that since the parties concerned have settled their dispute as mentioned above, therefore, he has no objection in quashing the impugned criminal proceedings against the applicants.

Before proceeding any further it shall be apt to make a brief reference to the case of ***Gian Singh Vs. State of Punjab*** reported in ***(2012) 10 SCC 303***, wherein the Apex Court has categorically held that the compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. The relevant portion of the said judgment of the Apex Court reads as follows:-

"57. The position that emerges from the above discussion can be

summarised thus: 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 F.I.R may be exercised where the offender and 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 be fittingly 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

The Apex Court in **Parbatbhai Aahir alias Parbathbhai Bhimsinghbhai Karmur and others vs. State of Gujarat and another, (2017) 9 SCC 641**, summarizing the broad principles regarding inherent powers of the High Court under Section 482 Cr.P.C. has recognized that these powers are not inhibited by provisions of Section 320 Cr.P.C.

The Apex Court in the case of **Narinder Singh and others vs. State of Punjab and others** reported in **(2014)6 SCC 466** and also in **State of Madhya Pradesh vs. Laxmi Narayan and others** reported in **(2019) 5 SCC 688**, has summed up and laid down principles by which the High Court would be guided in

giving adequate treatment to the settlement between the parties and exercise 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 criminal proceedings.

In the present case, no doubt offence under the relevant sections 363, 366 and 376 of IPC and Sections 3/4 of POCSO Act are not compoundable under Section 320 Cr.P.C. However, as explained by Hon'ble Apex Court in ***Gian Singh's, Narinder Singh's, Parbatbhai Aahir's and Laxmi Narayan's cases (supra)***, power of High Court under Section 482 Cr.P.C is not inhibited by the provisions of Section 320 Cr.P.C and FIR as well as criminal proceedings can be quashed by exercising inherent powers under Section 482 Cr.P.C, if warranted in given facts and circumstances of the case for ends of justice or to prevent abuse of the process of any Court, even in those cases which are not compoundable where parties have settled the matter between themselves.

In the case of ***Madan Mohan Abbot vs. State of Punjab, reported in (2008) 4 SCC 582***, the Apex Court emphasized and advised that in the matter of compromise in criminal proceedings, keeping in view of nature of this case, to save the time of the Court for utilizing to decide more effective and meaningful litigation, a commonsense approach, based on ground realities and bereft of the technicalities of law, should be applied.

In the aforesaid judgments, the Apex Court has categorically held that compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. The present case is also a case where two societal interests are in clash. To punish the offenders for a crime, involved in present case, is in the interest of society, but, at the same time, husband is taking care of his wife and in case, husband is convicted and sentenced for societal interest, then, wife will be in great trouble and their future would be ruined. It is also in the interest of society to settle and resettle the family for their welfare.

Considering the facts and circumstances of the case, as noted herein above, and also the submissions made by the counsel for the parties, the court is of the considered opinion that the victim/opposite party no.3, herself, has stated before this Court that she has married the applicant out of her own sweet will and is living happy married life. Out of their wedlock, they are blessed with a male child, who is presently four and half years old. Therefore, no useful purpose shall be served by prolonging

the proceedings of the above mentioned criminal case as the parties have already settled their dispute.

Accordingly, the charge sheet dated 25.06.2015 and the cognizance order dated 30.07.2015 as well as the entire proceedings of Criminal Case No. 36 of 2015 (State Vs. Rajiv Kumar), arising out of Case Crime No.118 of 2015, under Sections 363, 366 and 376 I.P.C. and Section 3/4 of POCSO Act, P.S. Doghat, District-Baghpat, Additional District and Sessions Judge, Baghpat are hereby **quashed**.

The application is, accordingly, **allowed**. There shall be no order as to costs.

A copy of this order be certified to the lower court forthwith.

Order Date :- 21.9.2022

Jitendra/-