

Court No. - 15

Case :- APPLICATION U/S 482 No. - 2941 of 2023

Applicant :- Pravin Kumar Singh @ Pravin Kumar And 2 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.,
Lko. And Another

Counsel for Applicant :- Ajeet Kumar Yadav, Ashish Kumar
Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

Sri Subhash Chandra Yadav, Advocate has put in appearance on behalf of opposite party No.2 by filing his *vakalatnama* in Court today, which is taken on record.

Heard Sri Ajeet Kumar Yadav, learned counsel for the applicants, Sri Anurag Verma, learned A.G.A. for the State, Sri Subhash Chandra Yadav, learned counsel for opposite party No.2 and perused the entire record.

The instant application under Section 482 Cr.P.C. has been filed by the accused/ applicants for quashing the entire proceedings of S. T. No.20 of 2014 "State vs. Pravin Kumar Singh and others" arising out of Case Crime No.345 of 2013, under Sections 376, 363, 366, 504, 506 I.P.C. and 3/4 POCSO Act, relating to Police Station Ashiyana, District Lucknow, pending in the Court of learned Special Judge, POCSO Act, Lucknow as well as impugned charge sheet no.35 of 2014, dated 15.02.2014 submitted against the applicant no.1 under Sections 376, 363, 366, 504, 506 I.P.C. and 3/4 POCSO Act and the applicant nos.2 and 3 under Sections 504, 506 I.P.C. by the Investigating Officer in the aforesaid case crime in the light of compromise took place between the parties.

Learned counsel for the applicants has submitted that a false

first information report came to be lodged against the accused/ applicants, who are innocent and have been falsely implicated in this case. His further submission is that in fact, the first information report came to be lodged at the behest of opposite party no.2 only because of the fact that the present applicant no.1 was acquainted with the opposite party no.2, victim. His next submission is that the victim, in her statement recorded under Sections 161 and 164 Cr.P.C., has supported the prosecution case. However, during the pendency of aforesaid criminal case, the applicants and opposite party no.2 have settled their dispute amicably.

His next submission is that, in fact, the accused/ applicant no.1 and the opposite party no.2, victim have married and are living happily together as husband and wife. Therefore, the impugned criminal proceeding deserves to be quashed.

His further submission is that having regard to the fact that the accused/ applicant no.1 and opposite party no.2, the victim are living together as husband and wife, no useful purpose would be served by keeping the impugned criminal proceeding pending against the accused/ applicants. The chance of clinching conviction, in the light of aforesaid fact, is remote and bleak.

Sri Subhash Chandra Verma, the learned counsel for opposite party No.2 has admitted the fact that the opposite party no.2, victim has married with the applicant no.1 and they are living happily together as husband and wife.

Per contra, Sri Alok Saran, learned A.G.A. for the State has vehemently opposed the prayer by submitting that Protection of Children from Sexual Offences Act, 2012 has been enacted by

the Legislature for prevention and protection of children as defined in the said Act. His further submission is that admittedly charge sheet has been submitted against the present applicant no.1 under Sections 376, 363, 366, 504, 506 I.P.C. and 3/4 POCSO Act and against the applicant nos.2 and 3 under Sections 504 and 506 I.P.C.

Learned A.G.A. for the State has also submitted that the victim was a child on the date of occurrence. Therefore, no compromise between such victim and the accused/ applicants is permissible in law. Therefore, the present application is misconceived, which is liable to be dismissed.

In **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335** the Hon'ble Supreme Court in paragraph no.102 has held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The Hon'ble Supreme Court in the case of **Rathish Babu Unnikrishnan v. State (NCT of Delhi), 2022 SCC OnLine SC 513** in para nos.16, 17 and 18 has held as under:-

"16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an enquiry as

to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies.

Hon'ble Supreme Court in the case of **Satish Kumar Jatav vs. State of U.P., 2022 LiveLaw (SC) 488** has held that the ground that "no useful purpose will be served by prolonging the proceedings of the case" cannot be a good ground and/or a ground at all to quash the criminal proceedings when a clear case was made out for the offence alleged. Likewise in **Ramveer Upadhyay vs. State of U.P., AIR 2022 SC 2044** the Hon'ble Supreme Court held that the jurisdiction under Section 482 Cr.P.C. is not to be exercised for asking. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint/F.I.R. except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. Entertaining a petition under Section 482 Cr.P.C. at an interlocutory stage itself might ultimately result in miscarriage of justice.

So far as the question of quashing of criminal proceeding of S. T. No.20 of 2014 "State vs. Pravin Kumar Singh and others" arising out of Case Crime No.345 of 2013, under Sections 376, 363, 366, 504, 506 I.P.C. and 3/4 POCSO Act, is concerned, Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another** reported in **(2014) 6 SCC 466**, has specifically held that the matter under Section 376 I.P.C. is also such an offence, which, though committed in respect of a particular victim, cannot be termed to be a private dispute between the parties. It has serious adverse societal effect. Therefore, any proceeding on the basis of alleged compromise

of the accused vis-a-vis the victim cannot be quashed. Hon'ble Apex Court in **State of Madhya Pradesh vs. Madanlal** reported in **(2015) 7 SCC 681** while repelling the acquittal on the basis of compromise in the matter pertaining to Sections 376 read with 511 I.P.C., has placed reliance upon principles laid down by three-Judge Bench in **Shimbhu vs. State of Haryana** reported in **(2014) 13 SCC 318**.

This principal of law also came to be reiterated recently by Hon'ble Supreme Court in **Daxaben vs. State of Gujarat and others** reported in **2022 SCC OnLine SC 936** wherein the Hon'ble Supreme Court in Paragraphs No.34, 38, 47 and 49 has held as under:-

"34. *In Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, this Court observed:—*

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."

38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be

circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

47. *In State of Madhya Pradesh v. Laxmi Narayan, (2019) 5 SCC 688, a three-Judge Bench discussed the earlier judgments of this Court and laid down the following principles:—*

"15. *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:*

15.1. *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;*

15.2. *Such power is not to be exercised in those prosecutions which involved 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;

15.3. *Similarly, such power is not to be exercised for the offences under the special statutes 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;*

15.4. *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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in *Narinder Singh [(2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54]* should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. *While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of noncompoundable 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."*

(emphasis supplied)

49. *In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence."*

Recently, a coordinate Bench of this Court in **Application U/s 482 No.8514 of 2023 titled as Om Prakash vs. State of U.P. and another**, has also held that the criminal proceedings under Section 376 I.P.C. and POCSO Act cannot be quashed on the basis of compromise entered into between the accused and the victim.

This Court is also able to notice that the fact, that the case under Protection of Children from Sexual Offences Act, 2012 can be compromised between the applicants and the opposite party no.2, victim is also engaging the attention of Hon'ble the Apex Court in **Writ Petition (s) (Criminal) No(s).253 of 2022 "Ramji Lal Bairwa and another vs. State of Rajasthan and another"**.

Thus, having regard to the aforesaid settled legal position, quashing of a case under Section 376 I.P.C. read with Sections 3/4 POCSO Act on the basis of compromise entered between the present accused/ applicant no.1 and opposite party no.2, the victim, is not legally permissible. Therefore, the instant application lacks merit and is liable to be dismissed.

With the aforesaid observations/ directions, the instant application under Section 482 Cr.P.C. **is dismissed**.

Order Date :- 29.3.2023/Mahesh