

Court No. - 87

Case :- APPLICATION U/S 482 No. - 9169 of 2024

Applicant :- Sanjeev Kumar

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Doodh Nath Yadav

Counsel for Opposite Party :- G.A.,Ramesh Kumar

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Prem Prakash, learned Senior Advocate assisted by Sri Doodh Nath Yadav, learned counsel for the applicant, Sri Ramesh Kumar, learned counsel for the opposite party no.2 and Sri Bade Lal Bind, learned State counsel and perused the records.

3. This application under Section 482 Cr.P.C. has been filed by the applicant Sanjeev Kumar with the following prayers:-

"It is, therefore, Most respectfully prayed that this Hon'ble Court may graciously be pleased to set- aside/ quash the impugned cognizance order dated 16.2.2024 passed by Special Judge (POCSO) Act, Azamgarh in Special Session Trial No. 54/2024, State Vs. Sanjeev Kumar) and impugned Charge sheet No.1 dated 26.11.2023 filed against applicant under Section 376, 313 I.P.C. and 3/4 of POCSO Act in Case Crime No. 360 of 2023, under Section 376, 313 I.P.C. and 3/4 POCSO Act, 2012 as well as entire proceedings of the Case Crime No. 360/2023, under Section 376, 313 I.P.C. and U/s 3/4 POCSO Act, 2012, P.S. Bilariaganj District Azamgarh.

It is further prayed that this Hon'ble Court may graciously be pleased to set aside the impugned order summoning order dated 16.2.2023 passed by Special Judge (POCSO) Act, Azamgarh passed in Special Session Trial No.54 of 2024, State Vs. Sanjeev Kumar, Case Crime No. 360 of 2023, under Section 376, 313 I.P.C. and 3/4 POCSO Act, Police Station Bilariaganj, District Azamgarh.

It is further prayed that this Hon'ble Court may graciously be please to stay the further proceedings of the Special Session Trial No.54 of 2024, State Vs. Sanjeev Kumar, Case Crime No. 360 of 2023, under Section 376, 313 I.P.C. and 3/4 POCSO Act, Police Station Bilariaganj, District Azamgarh pending in the Court of Special Judge (POCSO) Act, Azamgarh, during the pendency of this application

before this Hon'ble Court, otherwise the applicant shall suffer irreparable loss and injury. And/or may be pleased to pass such other and further order as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

4. The sole ground as argued before this Court is that subsequent to lodging of the FIR, conclusion of investigation and summoning the applicant by the trial court for offences under Sections 376, 313 IPC and Sections 3/4 POCSO Act vide order dated 16.02.2024 passed by the Special Judge (POCSO Act), Azamgarh a compromise dated 01.03.2024 (annexure 12 to the affidavit) has been entered into between the parties and affidavit dated 01.03.2024 has been filed by the victim/prosecutrix before the trial court along with a copy of the said compromise deed dated 01.03.2024 duly entered between the applicant and the victim and also an application dated 01.03.2024 that the said case be decided in terms of the said compromise and as such looking to the same, the said compromise be sent for verification and the proceedings against the applicant be quashed.

5. Learned counsel for the applicant has relied upon an order dated 06.06.2023 passed by a co-ordinate Bench of this court in Crl. Misc. Application U/s 482 No. 41580 of 2022 (Fakre Alam @ Shozil Vs. State of U.P. and 3 others) and has argued that in a case under Sections 363, 366, 376 (2N), 506 IPC and Section 6 of the POCSO Act a co-ordinate Bench of this Court has quashed the proceedings of the said case and thus the proceedings of the present case be also quashed.

6. Learned counsel for the opposite party no.2 has no objection to the arguments of learned counsel for the applicant. He submits that the opposite party no.2 has filed an application along with a compromise and has entered into a compromise with him and as such the petition be allowed.

7. Learned counsel for the State opposes the prayer for quashing and submits that the date of birth of the victim is 30.05.2005 and the FIR was lodged on 13.10.2023 with the allegation that she was subjected to sexual assault since last three years and as such she was aged about 15 years at that point of time and was a minor. It is argued that the victim was minor at the time of the incident of incident, charge sheet was submitted under the various sections on which the trial court finding prima facie offence made out against the applicant summoned him under the said sections as above. It is argued that the said petition be dismissed as compromise in a case of this nature cannot be entertained.

8. In so far as the order of a co-ordinate Bench of this Court which is being relied by the applicant is concerned, the present case is distinguishable with that on facts itself since the said Court in para 10 of the said order has returned a finding that on the material available on record it appears that the victim was above 18 years of age and as such no case under the POCSO Act is made out. In the present case there is no dispute of age and this Court cannot return a finding at this stage on the basis of arguments and pleadings regarding the age of the victim.

9. The Apex Court in the case of Narinder Singh Vs. State of Punjab : (2014) 6 SCC 466 has held as under:—

"29. 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:

29.1. 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.

29.2. 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.

29.3. 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.

29.4. On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

29.5. 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.

29.6. 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.

29.7. 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."

10. From the reading of paragraph 29.3, it is clear that the power under Section 482 of Code of Criminal Procedure should not be exercised in those prosecutions which involve heinous and serious offences like murder, **rape**, dacoity etc. as such offences are not private in nature and have a serious impact on the society. However, for the offence alleged to have been committed under "Special Statute" like the Prevention of Corruption Act, the prosecution cannot be quashed merely on the basis of compromise between the victim and the offender.

11. In the present case, the applicant is also facing trial for offence under Sections 3/4 of POCSO Act, 2012. The POSCO Act 2012 is a "Special Statute" and any offence under the "Special Statute" cannot be quashed on the basis of compromise.

12. In the cases of **Gian Singh Vs. State of Punjab : (2012) 10 SCC 330 and Narinder Singh** (supra) while deciding the application for quashing of FIR on the ground of compromise, the Court is under obligation to consider the nature and gravity of the offence. In Narinder Singh (supra), the Apex Court in paragraph 29.3 has observed as under:—

"(29.3). 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 the 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."

13. Thus, where the applicant is facing Trial for an offence punishable under the Special Statute, then the prosecution cannot be quashed on the basis of compromise.

14. Thus, it is clear that where the prosecutrix is a minor below 18 years of age, then her consent would be immaterial. When an offence is made out against the accused irrespective of the fact that whether the prosecutrix was a consenting party or not, then certainly, the prosecution cannot be quashed merely on the ground that at a later stage the prosecutrix has entered into a compromise. Once the consent of the minor prosecutrix is immaterial for registration of offence, then such consent shall still remain immaterial for all practical purposes at all the stages including for compromise. Merely because, the minor prosecutrix has later on agreed to enter into a compromise with the applicant, would not be sufficient to quash the proceedings. Since the POCSO Act, 2012 is a Special Act, therefore, in view of the provisions of Sections 375 Sixthly of IPC, the consent of the prosecutrix is material. Thus, this Court is of the considered opinion that the prosecution of the accused for offence under Sections 374 of POCSO Act, 2012 cannot be quashed merely on the ground that the prosecutrix has compromised the matter with the accused.

15. The Apex Court in the case of **Parbatbhai Aahir v. State of Gujarat :(2017) 9 SCC 641** has held as under:—

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must

evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

16. It is, thus clear that where the accused is facing trial for the offence of rape, then the factum of compromise under no circumstances can be of any help to him. They are crimes against the body of a woman. The honour of a woman cannot be put to stake by compromise or settlement. The Apex Court in the case of **State of Madhya Pradesh Vs. Madanlal : (2015) 7 SCC 681** has held as under:-

"18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to

be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.

19. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the élan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in *Shyam Narain v. State (NCT of Delhi)* [(2013) 7 SCC 77 : (2013) 3 SCC (Cri) 1] that: (SCC pp. 88-89, para 27)

"27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. 'physical morality'. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

17. The Apex Court in the case of **Narinder Singh** (supra) in paragraph 29.7 has held as under:—

"29.7. 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."

18. In view of the same, since the sections as charged against the applicant are not compoundable, this Court cannot proceed for quashing of the present case on the basis of the compromise, the application is thus ***dismissed***.

Order Date :- 2.4.2024

M. ARIF

(Samit Gopal, J.)