

Neutral Citation No. - 2024:AHC-LKO:10863

A.F.R.

Court No. - 27

Case :- APPLICATION U/S 482 No. - 11366 of 2023

Applicant :-

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

Counsel for Applicant :- Ravindra Kumar Dwivedi

Counsel for Opposite Party :- G.A., Dharmendra Kumar Tiwari

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Ravindra Kumar Dwivedi, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and Sri Dharmendra Kumar Tiwari, the learned counsel appearing on behalf of the opposite party no.2.

2. By means of the instant application filed under Section 482 Cr.P.C. the applicant has sought quashing of the entire proceedings of the Complaint Case No.39 of 2019: , arising out of Case Crime No. 29 of 2018, under Section 376 I.P.C. and Section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Sammanpur, District Ambedkar Nagar, pending in the Court of Special Judge, SC/ST Act, Ambedkar Nagar on the ground that the parties have entered into a compromise.

3. The opposite party no.2 had filed an application under Section 156 (3) Cr.P.C. on 13.04.2018 alleging that the applicant is a Police Constable and he came to the complainant's house on 01.04.2017 at about 11.00 a.m. and raped her and thereafter he repetitively raped her on various occasions. After investigation, the Investigating Officer submitted a final report dated

30.07.2018 stating that a Case Crime No.82 of 2016, under Sections 279, 337, 338, 304-A I.P.C. was lodged in Police Station Sammanpur, District Ambedkar Nagar. A police team had gone to arrest the accused persons and recover the stolen vehicle, whereupon some accused persons had resisted them in performance of their official duties. The Investigating Officer had lodged an F.I.R. No.37 of 2017, under Sections 147, 323, 504, 353, 332, 336 I.P.C. and Section 7 of Criminal Law Amendment Act and Section 3 (I) (x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complainant works at the brick kiln of one of the accused persons and she had filed the application under Section 156 (3) Cr.P.C. on false allegations under his pressure. The incident was not supported by any independent witness.

4. The opposite party no.2 filed a protest petition against the final report, which was accepted by means of an order dated 13.03.2019, passed by learned Additional Sessions Judge-II, Ambedkar Nagar and it was registered as a complaint. After recording of the statements under Sections 200 and 202 Cr.P.C. the applicant was summoned for trial for offence under Section 376 I.P.C. and Section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 by means of order dated 23.08.2022.

5. The applicant has sought quashing of the summoning order and the proceedings of the criminal case on the ground that the parties have entered into a compromise on 14.10.2023. The original compromise is annexed with the application under Section 482 Cr.P.C. wherein the opposite party no.2 stated that she had lodged the F.I.R. due to some misunderstanding, no party was guilty in the matter and both the parties had agreed to get the proceedings quashed by the competent court. It is categorically stated in the compromise that the parties are major and the decision was taken without any fear or coercion. The compromise has been

verified before a Notary Public and it has also been signed by the learned counsel for parties.

6. The opposite party no.2 has filed a counter affidavit accepting the factum of compromise and supporting the application for quashing of the proceedings.

7. Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State has opposed the application and he has submitted that the present case involves allegation of commission of rape which is a heinous offence and in view of the law laid down by Hon'ble the Apex Court in the case of *Daxaben Vs. The State of Gujarat and others: 2022 SCC OnLine SC 936* the proceedings of such a case cannot be quashed on the basis of a compromise between the parties.

8. In *Daxaben (supra)* an F.I.R. was lodged under Section 306 I.P.C. by a cousin and an employee of the deceased. The complainant and the accused entered into a settlement and the High Court of Gujarat at Ahamdabad quashed the proceedings upon an application filed under Section 482 Cr.P.C. on this ground alone. The widow of the deceased filed an application for recall of the order which too was dismissed by the High Court after recording that the original first informant had pocketed a hefty amount from the accused and he had gone totally out of picture post allowing of the quashing petition, therefore, the application for recall of order was not maintainable.

9. In appeal the Hon'ble Supreme Court held that the High Court had erred in declining the prayer of the widow of the deceased for recalling an order passed without hearing her only because the original informant/complainant who was a cousin and an employee of the deceased had been heard. The Hon'ble Supreme Court further held that “*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 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.”

10. In **Escorts Ltd. v. CCE**, (2004) 8 SCC 335, the Hon’ble Supreme Court held that: -

*“8. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid’s theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*² (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)*

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge, ...”

*9. In *Home Office v. Dorset Yacht Co.*³ Lord Reid said (All ER p. 297g-h),*

“Lord Atkin’s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.”

*Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2)*⁴ observed: (All ER p. 1274d-e) “One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;” And, in *Herrington v. British Railways Board*⁵ Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”

10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.”

11. The observations in ***Daxaben (supra)*** were made in the factual background of the case that husband of the appellant had committed suicide. The deceased's cousin, who was also his employee, had filed the F.I.R. and he had taken hefty sum from the accused persons to enter into a settlement and the proceedings were quashed on the basis of such settlement without hearing the widow of the deceased. There is no evidence in support of the allegation in the present case. During evidence the Investigating Officer had found the allegations to be false and there is no evidence in support of the allegations, except for the statement of the victim herself and the victim herself has resiled from the allegations and there is no allegation of any monetary transaction between the parties. Therefore, in view of the law laid down in ***Escorts Ltd.*** (Supra), the observations made in ***Daxaben*** (Supra) will not apply to the present case.

12. In ***Ramgopal v. State of M.P.***, (2022) 14 SCC 531, the appellants had abused and assaulted the complainant on account of certain monetary disputes. Appellant no. 1 had struck the complainant with a pharsa, which cut off the little finger of his left hand. Appellant 2 also struck lathi-blows on the body of the complainant. The appellants were thereafter committed for trial under Sections 294, 323 and 326 read with Section 34 IPC and

Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Magistrate had convicted the appellants under Sections 294, 323 and 326 read with Section 34 IPC. During pendency of the appeal filed against conviction, the parties had reconciled their disputes and sought quashing of proceedings under Section 482 Cr.P.C. on this ground. The High Court dismissed the application. While allowing the appeal, the Hon'ble Supreme Court held that: -

“12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482CrPC, even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyse the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 CrPC would be to secure the ends of justice. There can be no hard-and-fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482CrPC may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be

extended, as cautiously observed by this Court in Narinder Singh v. State of Punjab (2014) 6 SCC 466 and State of M.P. v. Laxmi Narayan, (2019) 5 SCC 688.

*14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. **Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that 'let no guilty man escape, if it can be avoided'.***

* * *

19. We thus sum up and hold that as opposed to Section 320 CrPC where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482CrPC or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 CrPC. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: -

19.1. Nature and effect of the offence on the conscience of the society;

19.2. Seriousness of the injury, if any;

19.3 Voluntary nature of compromise between the accused and the victim; and

19.4 Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

(Emphasis supplied)

13. The Hon'ble Supreme Court reversed the order of the High Court rejecting the prayer for quashing of the proceedings and had quashed the criminal proceedings on the basis of a compromise between the parties even after conviction of the appellant for offence under Section 326 I.P.C., which is punishable with imprisonment which may extend up to life.

14. In **Ramawatar v. State of M.P.**, (2022) 13 SCC 635, the FIR lodged under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 read with Section 34 IPC alleged that the appellant threw a brick on the complainant and also made filthy and slur remarks on her caste. There was a civil dispute between the parties. The appellant was convicted under Section 3(1)(x) of the SC/ST Act. The appeal filed against his conviction was dismissed by the High Court of Madhya Pradesh, Jabalpur Bench. During pendency of further appeal before the Hon'ble Supreme Court, the complainant filed an application that the parties had settled their disputes through a compromise. The Hon'ble Supreme Court held that: -

“17... where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482CrPC.”

(Emphasis supplied)

15. **Kapil Gupta v. State (NCT of Delhi)**, 2022 SCC OnLine SC 1030, is a judgment passed by the Hon'ble Supreme Court in an appeal filed against a judgment and order passed by an Hon'ble Single Judge of the High Court of Delhi, dismissing the application filed under Section 482 Cr.P.C. for quashing the proceedings under Section 376 of the Penal Code, 1860 ('IPC') on the ground that the parties had entered into a settlement. While allowing the appeal, the Hon'ble Supreme Court held that: -

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

16. The legal principles which can be culled out from a collective reading of the foresaid precedents, are that the extraordinary powers of the High Courts under Section 482 Cr.P.C. can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Such powers ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind the nature and effect of the offence on the conscience of the society; the seriousness of the injury, if any, the voluntary nature of compromise between the accused and the victim, the conduct of the accused persons and the other relevant considerations. Though the Courts should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there is sufficient evidence which may lead to proving the charges. The High Court can quash the proceedings even in cases where the parties have entered into a settlement after conviction. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast rule restricting the powers of

the High Court to do substantial justice, as a restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to grave injustice.

17. When we examine the facts of the present case in light of the aforesaid law, what we find is that after registration of the F.I.R. pursuant to an application under Section 156 (3) Cr.P.C., the Investigating Officer had found that the allegations levelled by the opposite party no.2 could not be established as no evidence could be collected in support thereof. It was recorded in the final report that the dispute had occurred when a police party had gone to arrest the accused and recover the stolen vehicle in connection with Case Crime No.82 of 2016. The complainant is an employee of one of the persons accused in that case and she had lodged the F.I.R. at the behest of that accused person to put undue pressure on the police persons. In the compromise, the complainant has categorically stated that she had levelled the allegations due to some misunderstanding and the applicant was not guilty.

18. When there is absolutely no evidence to support the allegation of rape by the applicant and the alleged victim has herself stated in the compromise that the offence was not committed and she had levelled the allegations due to some misunderstanding, that she is major and she had entered into the compromise without any fear or coercion agreeing for quashing of the proceedings after a long drawn full-fledged trial the applicant will surely be acquitted. In such circumstances, the criminal proceedings will only result in persecution of the applicant, as well as the opposite party no.2.

19. Keeping in view the aforesaid peculiar circumstances of the present case, I am of the considered view that the continuance of the proceedings will only be an abuse of the process of law and the proceedings deserve to be quashed.

20. Accordingly, the application is ***allowed***. The entire proceedings of the Complaint Case No.39 of 2019: arising out of Case Crime No. 29 of 2018, under Section 376 I.P.C. and Section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Sammanpur, District Ambedkar Nagar, pending in the Court of Special Judge, SC/ST Act, Ambedkar Nagar are hereby quashed.

(Subhash Vidyarthi, J.)

Order Date :- 6.2.2024
Ram.