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Court : Karnataka Dharwad

Decided On : Jul-18-2012

Judge : Anand Byrareddy

Appeal No. : Criminal Petition No.10343 of 2012

Appellant : Prashant

Respondent : State of Karnataka and Another

Judgement :

Anand Byrareddy, J

1. Heard the learned Counsel for the petitioner and the learned Government Pleader.

2. The present petition is filed by the husband of the second respondent.

3. The facts leading up to this case are as follows:

It is alleged by the Shahapur Police, Belgaum that the petitioner had committed offences punishable under Sections 498A, 504 and 307 of the Indian Penal Code, 1860 (Hereinafter referred to as the IPC for brevity) and a case was registered in Crime No.61/2011 by the jurisdictional Police Station and accordingly a complaint was registered before the JMFC III Court, Belgaum. The petitioner was promptly arrested and produced before the Court on 25.5.2011 and was remanded to

judicial custody. This was in the backdrop of one Ravi, son of Suryakant Shete of Belgaum having lodged a complaint that his sister, namely, Usha, the second respondent was given in marriage to the petitioner about six years prior to the complaint and it was a love marriage between the petitioner and the second respondent and the elders in the respective families had agreed to the marriage. A male child was born to the couple about four and half years prior to the complaint. It is alleged that the petitioner thereafter started ill-treating the second respondent on account of a discord having developed between them and he was alleged to be flirting with other women and therefore, there was rancour between the petitioner and the second respondent.

It was alleged that on 25.5.2011, a person had intimated the complainant that the petitioner and the second respondent were quarrelling with each other and that it appeared to be a serious altercation. In response to the call, the complainant, his mother and one Raghavendra Raikar went to the house of the petitioner and they noticed that the petitioner had put a crepe bandage around the neck of the second respondent and was trying to strangulate her. The complainant and others had intervened and inquired as to what transpired. At this, the second respondent had complained that the petitioner was seeking to be friend other women and therefore, there was an argument between them.

It transpires that the second respondent was admitted to the KLE Hospital, Belgaum. It is in this background that the petitioner was arrested and taken into custody. But as on date, it transpires that the petitioner and the second respondent have reconciled and are now living peacefully without any problems between them and therefore, are before this Court seeking the proceedings pending before the trial Court be quashed. As their attempts to have the matter compounded have proved futile.

4. The learned Government Pleader would raise a serious objection as to the maintainability of the present petition and he would submit that admittedly, the petitioner is accused of offences, which are non compoundable and therefore, the question of quashing the proceedings, on the footing that subsequent to the complaint, the petitioner and the second respondent have reconciled and therefore

the entire proceedings ought to be quashed, would make a mockery of the justice system and as the law has been set into motion, it would have to run its course and the petitioner or respondent No.2 seeking to initiate proceedings and thereafter to withdraw the same at their whim and fancy would render the entire system a mockery and therefore, would oppose the petition and would submit that the same be rejected at the threshold.

5. The learned counsel for petitioner, on the other hand, would submit that in identical circumstances, the Supreme Court in Shiji @ Pappu and others Vs. Radhika and Another, AIR 2012 SC 499, has expounded as to the efficacy of the High Court in exercise of its power under Section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the Cr.PC, for brevity) to quash the proceedings in the ends of justice. In this regard, the learned counsel would draw attention, to the facts of that case before the Supreme Court and the case law that is discussed, to contend that since the Supreme Court has paved the way for the exercise of the power of this court in appropriate cases, there is no irregularity or illegality in the present petition being allowed at the instance of the victim, who is before the court and who would declare that she is reconciled with the petitioner and that she no longer seeks to prosecute the criminal proceedings against him, notwithstanding that the complainant was her brother, when it was her instance and in the light of an offence having been committed against the second respondent, that the complaint was lodged and it is therefore the fervent plea of the Counsel that this court quash the proceedings in order to give a quietus to the episode and to ensure matrimonial harmony.

6. Given the above facts and circumstances and having regard to the ration of the judgment of the Supreme Court in Shiji, supra, it is useful to recount the background to the case before the Apex Court. In that case, the appeal before the Supreme Court arose out of an order passed by the Kerala High court, on a petition filed under Section 482 of the Cr.P.C, with a prayer for quashing criminal proceedings, whereby in the First Information Report, it was alleged that there was commission of offences punishable under Section 354 and 394 of the IPC and the same having been dismissed, the High Court had taken a view that the offences with which the appellants stood charged were not personal in nature, so as to

justify quashing the pending criminal proceedings on the basis of a compromise arrived at between the first informant-complainant and the appellants. The only question that arose for consideration was whether the criminal proceedings in question could be quashed in the facts and circumstances of the case, having regard to the settlement that the parties had arrived at. In this regard, the Apex Court, while referring to the several decided cases, had taken a view that in respect of offences which are non-compoundable, it would not be possible to set the proceedings to set the proceedings at naught at the instance of the parties. But however, the Court took note of a judgment in the case of Ram Lal and another Vs. State of Jammu and Kashmir, (1999) 2 SCC 213, wherein the Supreme Court had declared that such offences as are made compoundable under section 320 of the Cr.P.C., can alone be compounded and none else.

The Apex Court had also observed that it had declared two earlier decisions rendered in Y. Suresh Babu Vs. State of Andhra Pradesh, JT (1987) 2 SC 361, and Mahesh Chand Vs. State of Rajasthan, 1990 Supp SCC 681, to be per incuriam in as much as the same permitted composition of offences not otherwise compoundable under Section 320 of the Cr.P.C.

However, in Ram Lals case, supra, the Apex Court noted that, it was also observed that the parties had settled the dispute among themselves after the appellants stood convicted under section 326 IPC. The mutual settlement was then sought to be made a basis for compounding of the offence in appeal arising out of the order of conviction and sentence imposed upon the accused. The Apex Court had then observed that since the offence was non-compoundable, the Court could not permit the same to be compounded in the teeth of Section 320. Even so, the compromise was taken as an extenuating circumstance which the court took into consideration to reduce the punishment awarded to the appellant to the period already undergone.

To the same effect was the decision in Ishwar Singh Vs. State of Madhya Pradesh, (2008) 15 SCC 667, wherein the Apex Court had observed thus:

In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory

provisions, in our judgment, however limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the court may keep in mind.

The Apex court has then referred to another line of decisions, in which the Apex court has taken note of the compromise arrived at between the parties and quashed the prosecution in exercise of powers vested in the High court under section 482 Cr.P.C. namely, in State of Karnataka Vs. L. Muniswamy and Others (1977) 2 SCC 699, wherein the Apex court had held that the High court was entitled to quash the proceedings if it came to the conclusion that the ends of justice so required. The observation of the Apex Court was noted, which reads as follows:

Section 482 of the new Code, which corresponds to Section 561-A of the Code of 1898, provides that:

Nothing in this Code shall be deemed to limit, or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

In the exercise of this wholesome power the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Courts inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High court in quashing the proceedings in the interest justice. The ends of justice are higher than the ends of mere law through justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks

to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

In Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, (1988) 1 SCC 692, the Apex Court held that the High Court should take into account any special features, which appear in a particular case, to consider whether it is expedient and in the interest of justice, to permit a prosecution to continue or quash the prosecution, where in its opinion, the chances of an ultimate conviction are bleak and observed thus:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no usefid purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

In B.S. Joshi and Others Vs. State of Haryana, (2003) 4 SCC 675 the question that fell for consideration was, whether the inherent power of the High Court under Section 482 Cr.P.C. could be exercised quash non-compoundable offences. The High Court had, while relying on the decision in Madhu Limaye Vs. The State of Maharastra, (1977) 4 SCC 551, held that since offences under Sections 498 A and 406 IPC were not compoundable, it was not permissible in law to quash the First Information Report on the ground that there has been a settlement between the parties. The Apex Court declared that the decision in Madhu Limaye, supra, had been misread and misapplied by the High Court and that the judgment of this court in Madhu Limayes case, clearly supported the view that nothing contained in Section 320 (2) can limit or affect the exercise of inherent power of the High Court,

if interference by the High Court was considered necessary for the parties to secure the ends of justice and has quoted the following:-

8. It is, thus, clear that Madhu Limaye case (1977) 4 SCC 551: (AIR 1978 SC 47) does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

15. In view of the above discussion, we hold that the High court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code.

The Apex court has then referred to a decision in Madan Mohan Abbot Vs. State of Punjab, AIR 2008 SC 1969, wherein the High Court had declined the prayer for quashing of the prosecution for offences punishable under sections 379, 406, 409, 418, 506 read with section 34 IPC, despite a compromise entered into between the complainant and the accused. The High Court had taken the view that since the offence punishable under section 406 was not compoundable, the settlement between the parties could not be recognized nor the pending proceedings quashed. The Apex Court summed up the approach to be adopted in such cases in the following words:-

6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

7. We see from the impugned order that the learned judge has confused compounding of an offence with the quashing of proceedings. The outer limit of Rs. 250 which has led to the dismissal of the application is an irrelevant factor in the later case. We, accordingly, allow the appeal and in the peculiar facts of the case direct that FIR No. 155, dated 17.11.2001 PS Kotwali, Amristar and all proceedings connected therewith shall be deemed to be quashed.

To the same effect was the decision in Nikhil Merchant Vs. CBI, 2008 (9) SCC 677. While relying on B.S. Joshi, supra, the Apex Court took note of the settlement arrived at between the parties and quashed the criminal proceedings for offences punishable under sections 420, 467, 468 and 471 read with section 120-B of the IPC and held that since the criminal proceedings had the overtone of a civil dispute which had been amicably settled between the parties, it was a fit case, where technicality should not be allowed to stand in the way of quashing of the criminal proceedings, since the continuance of the same, after the compromise arrived at between the parties, would be a futile exercise.

Finally, the Apex Court has referred to a decision in Manoj Sharma Vs. State and Others, (2008) 16 SCC 1, and has quoted the following observation from that decision:-

8. In our view, the High Courts refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first information report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decide not to pursue the matter further the High Court could have taken a more pragmatic view of the matter xxxxxx

9. As we have indicated herein before, the exercise of power under section 482, Cr. P.C. or Article 226 of the Constitution is discretionary to be exercised in the facts of each case. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility ..

The Apex court finally pronounced that it is manifest that simply because, an offence is not compoundable under Section 320 IPC, is by itself no reason for the High Court to refuse exercise of its power under Section 482, Cr.P.C. That power can be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the Trial Court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under section 482 Cr.P.C. on the other. While a court trying an accused or hearing an appeal against conviction may not be competent to permit compounding of an offence, based on a settlement arrived at between the parties. In cases where the offences are not compoundable under section 320, the High court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under section 482 Cr.P.C. are not for that purpose controlled by section 320 Cr.P.C. The plenitude of the power under section 482 Cr.P.C, by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing an abuse of the process of law. The court has not enumerated the circumstances in which exercise of power under section 482 may be justified, but it is to be noted that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference, if it is called upon to appreciate evidence, for it cannot assume the role of an appellate Court while dealing with a petition under section 482 of the Cr. P.C. Thereafter, the Apex Court remanded the matter for consideration by the High Court, to determine whether it was a fit case in which the inherent powers may be invoked.

Coming back to the present case on hand, the guidelines that are set out by the supreme court, with reference to the decided cases, and the views expressed from time to time by the Apex Court, as to the manner in which the power under Section 482 could be exercised, while quashing the proceedings at the instance of the

parties, who may have arrived at a settlement, can be aptly pressed into service in the present case on hand, as the petitioner and respondent No. 2 are before the Court and have declared that they are living together happily. Having regard to the object that is sought to be achieved by allowing the present petition and quashing the proceedings, as it is evident that the second respondent, who is the wife and at whose instance, the complaint has been initiated no longer wishes pursue the same, as it would be counter productive to their happy married life, and having regard to the authoritative pronouncements in the aforesaid decisions, this court deems it proper to exercise power under Section 482 of the Cr.P.C. in the present case on hand, to quash the proceedings in order to secure the ends of justice. And if the proceedings are allowed to go on before the Court below, it would result in an abuse of process of law. Apart form the fact that having regard to the present stand of the second respondent a conviction of the accused is bleak as she is unlikely to support the case of the prosecution.

Accordingly, the petition is allowed and the proceedings before the Court below stand quashed.

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