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Court : Chhattisgarh

Decided On : Dec-18-2014

Judge : Prashant Kumar Mishra

Appeal No. : WP (Cr) No. 232 of 2014

Appellant : Deepak Sidar

Respondent : State of Chhattisgarh and Another

Judgement :

1. The petitioner has preferred this writ petition seeking quashment of the criminal proceeding in which he was tried for committing offence under Sections 457 and 380 of the IPC.

2. Facts of the case, briefly stated, are that in the intervening night of December, 2010, the petitioner along with other accused persons committed house trespass with intent to commit offence punishable with imprisonment and thereafter committed theft in the shop of complainant Laxman Prasad Baraith and took away one computer set of Epson company, another computer of HP, 20 numbers of G-5 Nokia mobile, one Samsung mobile, 10 numbers of memory card, one TV Tuner, one battery charger, one Nikon camera and mobile spare parts. The informant was informed by one Girdhar Baraith at about 5.30 am on 2.12.2010 that someone has committed theft in his shop by opening the lock by using gas cutter.

3. After completing investigation, charge sheet was filed against the petitioner and 2 other accused persons namely, Avinash @ Anthony @ Guddu and Raj Kumar Nirala. 3 other accused persons namely, Amit Kumar @ Jai Banjare, Kamlesh Kumar and Prakash Bharti being juveniles, their cases were presented before the Juvenile Justice Board.

4. In course of trial, complainant Laxman Prasad Baraith fully supported the case of the prosecution by proving the FIR (Ex.P/1); seizure memos Ex.-P/2, P/3 and P/4. Based on the petitioner's memorandum statement, several articles of theft were recovered from him vide Ex.- P/15, which was duly proved in course of trial. Thus, the offences having been proved, the petitioner was convicted for the said offences and was sentenced to undergo RI for 1 year and fine of Rs.200/-, in default, additional RI for 1 month for each of the offences. The appeal preferred by the petitioner is pending consideration before the Sessions Court.

5. Relying upon the judgment of the Supreme Court in Gian Singh Vs. State of Punjab and another ((2012) 10 Supreme Court Cases 303) learned counsel for the petitioner would strenuously urge that the offence under Sections 457 and 380 of the IPC not being a heinous offence, the same deserves to be quashed in view of the judgment rendered by the Supreme Court.

6. On the other hand, learned State counsel would oppose the writ petition.

7. In Gian Singh (supra), the Supreme Court has considered the difference between power of compounding of offences and the power of quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In para-51 of the judgment, it has been held that Section 320 Cr PC articulates public policy with regard to compounding of offences by cataloging offences punishable under the IPC which may be compounded without permission of the Court and certain other offences which may be compounded with the permission of the Court. It has further been held that none of the provisions of Cr PC limits or restricts the inherent powers of the Court, guideline for exercise of which is provided under Section 482 Cr PC itself i.e. to prevent abuse of process of any Court or otherwise to secure ends of justice. Section 482 confers no new power on the High Court, it merely safeguards existing inherent powers possessed by the High Court

necessary to prevent abuse of process of any Court or to secure ends of justice. The very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. It is founded on the legal maxim *quando lex aliquid alicui concedit, concebitur et id sine qua res ipsa sesse non potest*. The full import of which is whenever anything is authorized, especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection. Concluding the judgment, the Supreme Court held in para-61 thus:-

61. 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 predominatingly 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.

8. The question for consideration is - whether in the teeth of law laid down by the Supreme Court delineating the scope of powers under Section 482 Cr PC or under Article 226 of the Constitution, proceedings in the present case are such which can be quashed by bringing the same within classification made permissible by the Supreme Court for allowing quashment?

9. What has been permitted to be quashed are offences which have overwhelmingly and pre-dominatingly civil flavour, 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. According to the Supreme Court, it is these category of cases which may be quashed by the High Court because of compromise between the offender and the victim, as the possibility of conviction is

remote and bleak and continuation of criminal case would put the 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.

10. The cases of lurking house trespass and commission of theft are not of such nature wherein only the offender and the victim are involved. It has neither civil flavour nor a matrimonial dispute. In a civilized society, committing house trespass in the midnight by making preparation to commit offence, that too forming a group and thereafter taking away the valuables in the form of electronic goods is an offence against the society and it cannot be quashed merely on the basis of compromise between the first informant and the accused. Moreover, in the present case, the petitioner already stands convicted and the trial is no longer pending before the trial Magistrate. The complainant has fully supported the case of the prosecution and the offence is proved leading to the petitioner's conviction. Therefore, it is also not a case where possibility of conviction is remote and bleak and continuation of the criminal case would put the petitioner to great oppression and prejudice.

11. In the considered opinion of this Court, present is not a fit case for quashing the criminal proceeding which is pending in appeal before the Sessions Judge.

12. The writ petition is accordingly dismissed.

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