

**Swapnil and Others Vs. Neha and Another**

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**Court :** Mumbai Nagpur

**Decided On :** Feb-18-2015

**Judge :** A.B. Chaudhari & P.N. Deshmukh

**Appeal No. :** Criminal Application No. 53 of 2015

**Appellant :** Swapnil and Others

**Respondent :** Neha and Another

**Advocate for Pet/Ap. :** Mrs. Anjali Joshi, Mrs. Joshi

**Judgement :**

**A.B. Chaudhari, J.**

1. Rule. Rule returnable forthwith. Heard finally by consent of the parties.

2. By the present application, applicant no.1 husband, applicant nos. 2 and 3 father and mother-in-law of non applicant no.1 have invoked the power of this court under Section 482 of the Code of Criminal procedure for quashing of the criminal proceedings under Section 498A, 323, 504, 506, read with Section 34 of the Indian Penal Code in Regular Criminal Case No. 0404538/2013 pending before the Judicial Magistrate First Class, Chandrapur upon its transfer from Judicial Magistrate First Class, Pune to Judicial Magistrate First Class, Chandrapur, pursuant to the order dated 20.08.2014 in Criminal Application No. 1/2014 decided

by this Court.

3. In support of the present application, Mrs. Anjali Joshi, learned counsel for the applicants, submitted that non applicant no.1 had lodged FIR with Police Station, Loni Kadbhor, Pune and as such upon investigation, the said Police Station had filed chargesheet in the court of J.M.F.C. Pune. Therefore, Criminal Application No.1/2014 was made by non applicant no.1 in this Court for transfer of the said Criminal Case from Pune Court to Chandrapur Court and this Court by a reasoned order, allowed the transfer of said Criminal Case from Pune to Chandrapur and accordingly, now J.M.F.C. Chandrapur is in seisin of the said criminal case. Mrs. Joshi submitted that non applicant no.1-wife is present in the Court today and she has no objection for quashing the FIR as well as present criminal case above mentioned. In addition, she invited our attention to the draft consent terms which were drawn before the Mr. Abhay Bhide, Mediator at this Bench, and submitted that even as per the said draft consent terms and in particular, clause (4) in it is stated that FIR as well as Criminal Case will have to be quashed since the parties have amicably settled the matrimonial dispute. She submitted that as per the draft consent terms, the petition for divorce for mutual consent was also filed before the Family Court at Nagpur and is pending for hearing before the said Court. She submitted that a Demand Draft in the sum of Rs.6,00,000/- towards full and final settlement for mutual divorce has also been deposited with the Family Court for being paid to non applicant no.1-wife. She invited our attention to the decision of the apex Court in **GianSingh ..vs.. State of Punjab and another; (2012) 10 SCC 303.**

4. Non applicant no.1-wife is present before this Court and was identified by Mrs. Joshi, learned counsel for the applicants. Heard learned counsel for the rival parties. Perused the record.

5. Section 482 of the Criminal Procedure Code reads thus:

**482. Saving of inherent power of High Court:**

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.

The Larger Bench i.e. a Three Judge Bench of the Apex Court in the case of **Gian Singh** (supra) considered the provision of Section 482 of the Cr. P. C. in paragraphs 52, 53, 54, 55, 56, 57 and 58, stated thus:

52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, nothing in this Code which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

55. In 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. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and 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 authorised 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.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are

not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

The Supreme Court, by way of conclusion, added paragraph 61, which reads 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 pre-dominantly civil flavor 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.

6. From the reading of Section 482 of the Cr. P. C. and the ratio decidendi above, we find that it is a settled legal position that the inherent powers of the High Court

are required to be exercised to prevent abuse of process of the Court or otherwise to secure the ends of justice. This power is to be exercised sparingly and not in a mechanical manner. After the aforesaid decision was rendered by the Supreme Court in **GianSingh** (supra), this Court is flooded with applications under section 482 Cr. P. C. Be that as it may, insofar as the present case is concerned, we find that the following portion extracted from paragraph (4) of the draft consent terms are objectionable and is in the nature of dictate to the High Court to exercise power under section 482 of Cr. P. C.

(4) The applicant has filed complaint against the respondent under section 498 (A), 323, 504, 506 and 34 of the Indian Penal Code before the Police Station Loni Kadbor, Pune bearing F.I.R. No. 332/2012 and accordingly R. C. C. No. 0404538/2013 is pending before the learned Judicial Magistrate First Class, Court No. 7, Pune likely to be transferred at Chandrapur. It is hereby agreed that, the respondent shall file a petition under section 482 of the Code of Criminal Procedure before the Hon'ble Nagpur Bench of the Bombay High Court seeking to quash R.C.C.No. 0404588/2013 after its transfer from Pune to Chandrapur. All the expenses of this proceedings of S.482, will be borne by respective parties. It is further agreed that, the applicant will give her No Objection for quashing complaint filed by applicant under section 498 (A), 323, 504, 506 and 34 of Indian Penal Code bearing R.C.C.No. 040/588/12 which is pending before the learned Judicial Magistrate First Class Court No.7, Pune. It is hereby agreed that, the respondent will start the proceeding for quashing of the said complaint after filing of the petition under Section 13B of the Hindu Marriage Act, 1956 after transfer of R.C.C. No. 0404588/13 at Chandrapur.

7. Apart from the above, what we find is that terms 8 and 9 are also not happily worded and are again in the nature of making compulsion on the Court to quash the FIR as well as chargesheet or proceedings under the Domestic Violence Act by exercising inherent jurisdiction under Section 482 of the Code of Criminal Procedure. Terms 8 and 9 read thus:

(8) All these procedures of withdrawal of cases by wife under Sec.498A IPC and Domestic Violence Act and quashing of proceeding under Sec.482 etc. will be

done before passing of the decree for mutual divorce and no proceeding will remain pending before passing of the decree.

(9) In the event the terms of compromise are not implemented, for any reason, whatsoever, both parties shall be entitled to prosecute proceedings against each other in accordance with law.

Insofar as the criminal proceedings are concerned, the parameters laid down by the apex Court in the case of **GianSingh** (supra) do not allow such type of course as is adopted in the present case.

8. There is an important facet, particularly in matrimonial disputes between husband and wife and others namely; even before a decree for mutual divorce is actually passed by competent court or civil court, the parties approach this Court for quashing the FIR, chargesheet and criminal proceedings in exercise of powers under section 482 of the Cr. P. C. Not only that, as in the present case, term (9) shows that if terms of compromise are not implemented for any reason whatsoever, both parties shall be entitled to prosecute proceedings against each other in accordance with law, which is wholly unsustainable. Once the proceedings, FIR and chargesheet are quashed by the High Court in exercise of powers under section 482 of the Cr. P. C. and if proceedings for mutual divorce etc. do not actually culminate into final decree by the competent court or that the parties to such a decree take a somersault after quashment of the proceeding, it is difficult to understand as to how the criminal proceedings, which are quashed by the High Court can be restored again.

9. In the light of the above discussion, we are of the firm opinion that in such cases of matrimonial disputes, if FIR/chargesheet are sought to be quashed under inherent powers, ordinarily, this Court should not entertain the application under section 482 Cr. P. C. for quashment of FIR/chargesheet until the decree is passed by a competent matrimonial court and certified copy thereof is placed on record along with the application. We clarify this position in order to avoid any chaos in such type of matters.

10. In view of above, we pass the following order.

## **ORDER**

Criminal Application (APL) No. 53/2015 is disposed of reserving liberty in favour of the applicants as well as non applicant no.1-wife to file fresh application only after culmination of matrimonial proceedings of divorce/mutual divorce, as the case may be, by placing certified copy of the decree on record.

Rule discharged.

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