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Court : Mumbai Goa

Decided On : Jul-09-2015

Judge : C.V. Bhadang

Appeal No. : Criminal Writ Petition No. 75 of 2015

Appellant : Avinash Cabral and Others

Respondent : Public Prosecutor, High Court of Bombay and Others

Judgement :

Oral Judgment:

1. Rule. Rule made returnable forthwith.

2. Mr. Rivakar, learned Public Prosecutor waives service on behalf of respondents no.1 and 2.and Mr. Shet waives service on behalf of respondent nos. 3 and 4.

3. Heard finally by consent of the parties.

4. By this petition under section 482 of the Cr.P.C., the petitioners who are the accused in Session Case No. 22/2015 pending on the file of the 1st Additional Sessions Judge, North Goa at Panaji are seeking quashing of the charge sheet/proceedings.

5. The prosecution case as per the complaint filed by the respondent no.3, who is the wife of the respondent no.4/victim on 16/10/2014, is that on 16/10/2014 at about 17.00 hours when the respondent no.4 was standing near the truck at the fish market, he was assaulted by the petitioner no.1 by a hockey stick/iron rod on his leg and other parts of his body. It is stated that the petitioners no. 2 and 3 had caught hold of the shirt of respondent no.4. On the basis of complaint lodged by respondent no.3, an offence came to be registered under section 324 of I.P.C and on completion of the investigation a charge sheet came to be registered under section 307 of I.P.C, which is presently pending on the file of the Addl. Sessions Judge, at Panaji.

6. It is submitted on behalf of the petitioners that they have settled the disputes and differences and are presently staying in harmony. It is submitted that unfortunately the complaints were out of some disputes and differences, which they have now resolved. It is, therefore, prayed that charge sheet may be quashed.

7. The respondents no.3 and 4 have filed separate affidavits stating that they have resolved the dispute and they have no objection for quashing the charge sheet.

8. It is submitted by Shri Rivankar, the learned Public Prosecutor for respondents no.1 and 2 that in view of the settlement between the parties, appropriate orders may be passed.

9. I have heard Shri Rodrigues, the learned counsel for the petitioners, Shri Rivankar, the learned Public Prosecutor for the respondents no.1 and 2 and Shri Shet, the learned counsel for respondents no.3 and 4.The petitioners and the respondents no.3 and 4 are personally present before the Court and admit the correctness of the petition and the affidavits.

10. The Hon'ble Apex Court in the case of Gian Singh Vs. State of Punjab reported in (2012) 10 SCC 303 has inter alia held that the High Court can exercise powers under section 482 of Cr. P.C for quashing of the complaint where the parties have settled their disputes. Such power can be exercised in appropriate cases depending upon the facts and circumstances of each case. It has been held that

normally such power can be exercised where the offences alleged against the petitioners are not serious or heinous or involving metal depravity, such as murder, rape, dacoity etc. or under special statutes like Prevention of Corruption Act or offences committed by public servants. Thus, the Court can exercise powers under section 482 Cr. P.C., in appropriate cases in respect of offences, which do not involve any public law element. While exercising such power the Court would have regard to the nature and gravity of the crime.

10. In a recent decision in the case of Narinder Singh Vs. State of Punjab reported in (2014) 6 SCC 466, the offence sought to be quashed was punishable under section 307 of I.P.C.. The Hon'ble Apex Court held thus in para 33 of the judgment:

We have gone through the FIR as well as which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz.

respectable persons have been trying for a compromise up till now, which could not be finalized.? This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elder of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between the parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings rising out of FIR No.121

dated 14/7/2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly.?

11. The Hon'ble Apex Court has further laid down the principles by which the Hon'ble High Court would be guided in the matter in paragraph 29 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 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 predominantly 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.?

12. Thus, although an offence under section 307 of IPC would fall in the category of a heinous and serious offence, as per para 29.6 of the judgment, in the case of Narinder Singh (supra), it would be open to this Court to examine as to whether incorporation of section 307 of I.P.C. 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 this Court to go by the nature of the injuries sustained and whether such injuries are inflicted on the vital/delicate parts of the body, the nature of the weapon used etc.. A perusal of the Hurt Certificate in this case shows a lacerated wound with swelling tenderness and a contused laceration on the left leg and left hand and right knee of the victim. There was swelling/tenderness with fracture of right patella bone. All the injuries are on non vital parts. The initial offence was registered under section 324 of I.P.C.. One more relevant circumstance is the stage at which said settlement is reached and quashing of the proceeding is sought. In the present case, the Sessions Case is at a preliminary stage, as charge is yet to be framed. The

petitioners are not shown to have any criminal antecedents.

13. The petitioners have deposited an amount of Rs.15,000/- (Rupees Fifteen thousand only) with the Goa State Legal Services Authority as a matter of remorse.

14. In such circumstances, I find that the petition can be allowed. Hence, the following order is passed:

ORDER

The charge sheet and the consequent proceedings in Sessions Case No.22/2015 pending on the file of the learned Additional Sessions Judge, North Goa, Panaji are hereby quashed.

Rule is made absolute in the aforesaid terms with no order as to costs.

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