

Anirudh Azad Vs. State and Anr

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Court : Rajasthan Jodhpur

Decided On : Jul-24-2015

Appellant : Anirudh Azad

Respondent : State and Anr

Judgement :

S.B.CRIMINAL MISC.

PETITION NO.1967/2015 Anirudh Azad V/S State of Rajasthan & Anr.

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC.

PETITION NO.1967/2015 Anirudh Azad V/S State of Rajasthan & Anr.

Date of order : 24.07.2015 PRESENT HON'BLE Mr.JUSTICE VIJAY BISHNOI
Mr.Iqbal Sherani, for petitioner.

Mr.O.P.Rathi, Public Prosecutor.

Mr.M.R.Bishnoi, for respondent No.2.

Mr.Anirudh Azad, petitioner present in person.

Ms.Shilpa Trivedi, respondent No.2 present in person.

BY THE COURT:- This criminal misc.

petition under Section 482 Cr.P.C.has been preferred by the petitioner with the prayer for quashing the proceedings pending against him before Additional Chief Metropolitan Magistrate No.6, Jodhpur Metropolitan (hereinafter referred to as 'the trial court') in Criminal Original Case No.291/2012 - State versus Anirudh Azad (arising out of C.R.No.220/2011 dated 08.08.2011 of Police Station, Mahila Thana, District Jodhpur).whereby the trial court vide order dated 20.02.2015 has attested the compromise for the S.B.CRIMINAL MISC.

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2 offences punishable under Sections 406 and 323 IPC but refused to attest the compromise for the offence punishable under Section 498-A IPC as the same is not compoundable.

Brief facts of the case are that on a complaint lodged at the instance of respondent No.2, the FIR No.220/2011 has been registered at Police Station, Mahila Thana, District Jodhpur against the petitioner and the police started investigation.

After investigation, the police filed challan against the petitioner for offences punishable under Sections 406, 323 and 498-A IPC in the trial court wherein the trial is pending against the petitioner for the aforesaid offence.

During the pendency of the trial, an application was preferred on behalf of the petitioner as well as the respondent No.2 while stating that both the parties have entered into compromise and, therefore, the proceedings pending against the petitioner may be terminated.

The trial court vide order dated 20.02.2015 allowed the parties to compound the offence punishable under Sections 406 and 323 IPC, however, rejected the application so far it S.B.CRIMINAL MISC.

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3 relates to compounding the offence punishable under Section 498-A IPC.

The present criminal misc.

petition has been preferred by the petitioner for quashing the said proceedings against him.

The learned counsel for the petitioner has argued that as the complainant-respondent No.2 and the petitioner have already entered into compromise and on the basis of it, the petitioner have been acquitted for the offence punishable under Sections 406 and 323 IPC, there is no possibility of conviction of the petitioner for the offence punishable under Section 498-A IPC.

It is also contended by learned counsel for the petitioner that the parties have decided to live separately by mutual consent and in this regard a joint application under Section 13-B of the Hindu Marriage Act, 1955 has already filed and the same is resulted into divorce decree by the concerned family court.

It is also argued that no useful purpose would be served by continuing the trial against the petitioner for the offence punishable under Section 498-A IPC because the S.B.CRIMINAL MISC.

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4 same may derail the compromise arrived at between the parties.

The learned counsel for the respondent No.2 has admitted that the parties have already entered into compromise and decided to live separately and the respondent No.2 does not want to press the charges levelled against the petitioner in relation to offence punishable under Section 498-A IPC.

Mr.Anirudh Azad-petitioner and Ms.Shilpa Trivedi-respondent No.2 are present in person and they have been identified by their respective counsels.

They have conceded that the compromise has been arrived at between them and they have decided to live separately and now the respondent No.2 does not want to press the charges levelled against the petitioner.

The Hon'ble Apex Court while answering a reference in the case of Gian Singh versus State of Punjab & Anr.

reported in JT20129) SC - 426 has held as below:- 57.

The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding S.B.CRIMINAL MISC.

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5 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 victims 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 S.B.CRIMINAL MISC.

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6 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 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 S.B.CRIMINAL MISC.

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7 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.

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Having considered the facts and circumstances of the case and looking to the fact that the parties have entered into a compromise and decided to live separately and in pursuance of that, appropriate proceedings have also been decided by the concerned family court, there is no possibility of the accused- petitioner being

convicted in the case pending against him.

When once the matrimonial disputes have been settled by the mutual compromise, then no useful purpose would be served by keeping the S.B.CRIMINAL MISC.

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8 criminal proceedings pending.

Keeping in view the observations made by the Hon'ble Supreme Court in Gian Singh's case (supra).this Court is of the opinion that it is a fit case, wherein the criminal proceedings pending against the petitioner can be quashed while exercising powers under Section 482 Cr.P.C.Accordingly, this criminal misc.

petition is allowed and the criminal proceedings pending against the petitioner before the Additional Chief Metropolitan Magistrate No.6, Jodhpur Metropolitan in Criminal Original Case No.291/2012 - State versus Anirudh Azad (arising out of C.R.No.220/2011 dated 08.08.2011 of Police Station, Mahila Thana, District Jodhpur) are hereby quashed.

[VIJAY BISHNOI]., J.

Abhishek 85

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