

Manoj Sharma Vs. State and ors.

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Court : Supreme Court of India

Decided On : Oct-16-2008

Reported in : 2008(2)ALD(Cri)923; 2008(4)KLT417(SC)

Judge : Altamas Kabir;

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 304B, 307, 326, 395, 420, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 320, 320(1), 320(2), 320(9), 406, 482 and 498A; [Constitution of India](#) - Article 226

Appeal No. : Criminal Appeal No. 1619 of 2008 (Arising out of S.L.P. (Crl.) No. 5265 of 2007)

Appellant : Manoj Sharma

Respondent : State and ors.

Advocate for Def. : B.B. Singh, ; Savitri Pandey and ; D.S. Mahra, Advs.

Advocate for Pet/Ap. : H.K. Chaturvedi, Adv

Disposition : Appeal allowed

Prior history : From the final Judgment and Order dated 17.8.2007 of the High Court of Delhi at New Delhi in W.P. (Crl.) No. 1075 of 2007

Judgement :

Altamas Kabir, J.

1. Leave granted.

2. The question whether a First Information Report under Sections 420/468/471/34/120B IPC can be quashed either under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution, when the accused and the complainant have compromised and settled the matter between themselves, is the question which arises for decision in this appeal.

3. The identical question fell for the consideration of this Court in the case of B.S. Joshi v. State of Haryana : 2003 CriLJ2028 wherein also the question arose as to whether criminal proceedings or a First Information Report or complaint filed under Section 498A and 406 IPC by the wife could be quashed under Section 482 Cr PC on account of the fact that the offences complained of were not compoundable under Section 320 of the Code. The objection taken in the said case has also been raised by Mr. B.B. Singh, learned advocate for the respondent State.

4. In B.S. Joshi's case, this Court drew a distinction between compounding an offence as permitted under Section 320 Cr PC and quashing of the complaint or criminal proceedings under Section 482 Cr PC as also Article 226 of the Constitution. Pointing out that the appellant in the said case had not prayed for compounding the offence as the same was not compoundable, this Court observed with reference to the earlier decision in Pepsi Food Limited v. Special Judicial Magistrate : 1998 CriLJ1 , that where the Court will exercise jurisdiction under Section 482 of the Code could not be inflexible or rigid formulae to be followed by the Courts could not be laid down. Exercise of such power would depend upon the facts and circumstances of each case but with the sole object of preventing abuse of the process of any Court, or otherwise to secure the ends of justice. It was also observed that it is well settled that these powers have no bar, but the same was required to be exercised with utmost care and caution. Accordingly, the learned Judges held that the power of the High Court under Section 482 of the Code to quash Criminal proceedings or FIR or complaint were not circumscribed by Section 320 of the Code of Criminal Procedure.

5. While the appellant herein strongly relied on the decision in B.S. Joshi's case. Mr. B.B. Singh, learned Counsel appearing for the respondent-State urged that having regard to the specific provision in the Code regarding compounding of offences, and indicating what offences may be compromised either with or without the leave of the Court, possibly the decision rendered in B.S. Joshi's case required a second look. Relying on the decision of this Court in *Inspector of Police, CBI v. Rajagopal* : (2002)9SCC533 , *K.G. Prem Shankar v. Inspector of Police and Anr.* : 2002 CriLJ4343 and also *Textile Labour Association and Anr. v. Official Liquidator and Anr.* : (2004)IILLJ760SC , Mr. Singh submitted that in B.S. Joshi's case there was a departure from the view taken in the first of the two aforesaid cases.

6. We have carefully considered the submissions made on behalf of the respective parties and the facts involved in this case, and we are not inclined to accept Mr. Singh's contention that the decision in B.S. Joshi's case requires reconsideration, at least not in the facts of this case. What was decided in B.S. Joshi's case was the power and authority of the High Court to exercise jurisdiction under Section 482 Cr PC or under Article 226 of the Constitution to quash offences which are not compoundable. The law stated in the said case simply indicates the powers of the High Court to quash any criminal proceeding or First Information Report or complaint whether it be compoundable or not. The ultimate exercise of discretion under Section 482 Cr PC or under Article 226 of the Constitution is with the Court which has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 Cr PC. We are unable to disagree with such statement of law. In any event, in this case, we are only required to consider whether the High Court had exercised its jurisdiction under Section 482 Cr.P.C. legally and correctly.

7. In view of the nature of the offences set out in the complaint, the High Court did not consider it an appropriate case for exercising its jurisdiction under Article 226 of the Constitution for quashing the same.

8. In our view, the High Court's 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 decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the First Information Report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case. As we have indicated hereinbefore, 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.

9. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility.

10. We, accordingly, allow the appeal and set aside the order of the High Court and quash the criminal proceedings pending before the learned Additional Chief Metropolitan Magistrate, Karkardooma Court, Delhi, in FIR No. 50 of 1997 dated 31st January, 1997 P.S. Vivek Vihar (East Delhi).

Markandey Katju, J.

1. I have read the judgment of my learned brother Hon. Kabir, J. and I respectfully agree with his conclusion that the appeal should be allowed and the judgment of the High Court as well as the criminal proceedings pending before the Additional Chief Metropolitan Magistrate, Karkardooma Court, Delhi in FIR No. 50 of 1997 dated 31st January, 1997 P.O. Vivek Vihar (East Delhi) against the appellant should be quashed.

2. However, I wish to give a separate concurring judgment in view of the importance of the issue involved in this case.

3. The question involved in this case is whether an FIR under Section 420/468/471/34/120B IPC can be quashed under Section 482 Cr.P.C. or Article 226 of the Constitution when the accused and the complainant have compromised

and settled the matter between themselves.

4. The allegations in the FIR are as follows:

Statement of Sanjay Pal S/o Mahendra singh Pal R/o House No. A-25, Jhilmil Colony, Vivek Vihar, Delhi, stated that I reside at the above mentioned address with my family. I got financed a Maruti Van bearing No. DL- 1CB-4065 from Shri Manoj Kumar Sharma - Vijay Lakshmi Finance & Investment Company before two years back for a consideration amount of Rs. 30,000/- and I paid Rs. 3954/- as first installment. After that Shri Man Mohan Sharma R/o D-131, Jhilmil Colony, came and told me that your finance is fabricated one, that is why your vehicle has not been financed by me from Real Auto Deals which is run by my brother-in-law. I have received the payment given by you and your file. He asked me to give return the first R.C. He gave me the new R.C. I returned him the old R.C. He suggested me that now the financer of your vehicle is Real Auto Deals. I was shocked that how the vehicle got transferred without signing any form and paper. Man Mohan Sharma used to receive the installments in cash every month from me. The receipts issued to me put up with neither rubber stamp nor used the letter head of Real Auto Deals. The cheques received from me, encashed him in different-different names instead depositing in the account of Real Auto Deals. When it has come to my notice that he is playing fraud with me, then visited the bank and got stopped the payment of the cheques. He came to me when the cheque was dishonoured and asked me why you stop the payment. I explained him that I have already sent you a notice stating that I will make the payments of the installments in the name of Real Auto Deals but you are not doing so, therefore, I got stopped the payments. Thereafter, on 27.12.1995 at about 10 O'clock he came to me in Jhilmil along with an unknown person, I can recognize him if he comes to me, took my said Maruti Van with his help without my consent by showing me a paper duly stamped by the police. Vijay Lakshmi Finance, Real Auto Deals and Man Mohan Sharma, have sold my vehicle to some other place by making my forged signatures and by playing fraud with me, in connivance of each other. The appropriate legal action may kindly be taken against all these persons. Statement heard which is correct. Sd/- English. Sanjay Pal 31.1.97 Attested Sd/- English Satya Narayan ASI 31.1.97.

5. A perusal of the FIR shows that the allegations against the appellant were that he forged documents in respect of a vehicle and thereafter indulged in cheating and deposited the cheques received from the complainant against financing of the vehicle in different accounts. It is also alleged in the FIR that the appellant sold the vehicle of the complainant to some other party by making forged signature and by playing fraud with him.

6. On the basis of the above FIR charges were framed against the appellant and co-accused Man Mohan Sharma.

7. The appellant filed a writ petition before the High Court for quashing the FIR on the ground that the matter had been compromised between the complainant and the accused. In that writ petition an affidavit was filed by the complainant stating that in view of the settlement between the parties he is withdrawing the allegations against both the writ petitioners and he is also withdrawing the FIR. As per the amicable settlement a sum of Rs. 45,000/- would be paid to the appellant Manoj Sharma and a further sum of Rs. 45,000/- would be paid to the co-accused Man Mohan Sharma.

8. However, the Delhi High Court by the impugned judgment dated 17.8.2007 rejected the writ petition and hence this appeal.

9. It may be mentioned that under Section 320(1) Cr.P.C. certain offences in the IPC can be compounded by the persons mentioned in the 3rd column of the table in that provision. Also, in view of Section 320(2) certain other offences can be compounded with the permission of the Court. However, Section 320(9) specifically states:

No offence shall be compounded except as provided by this Section.

10. A perusal of Section 320 shows that offences under Section 468, 471, 34 and 120B IPC (which are mentioned in the FIR in question) cannot even be compounded with the permission of the Court. In fact, Section 320(9) Cr.P.C. expressly states that no offence shall be compounded except as provided by this Section. It apparently follows, therefore, that except for Section 420 IPC, which can be

compounded with the permission of the Court in view of Section 320(2), the other provisions mentioned in the FIR in question could not be compounded even with the permission of the Court. It, prima facie, seems to follow that the offences mentioned in the FIR were not compoundable except in relation to the allegations about Section 420 IPC.

11. There are other provisions in the IPC e.g. Section 498A which apparently cannot be compounded even with the permission of the Court in view of Section 320(9) Cr.P.C.

12. However, this was creating a lot of difficulty and hardship to the public and hence a way out was found by this Court in B.S. Joshi and Ors. v. State of Haryana : 2003 CriLJ2028 . In that decision this Court referred to its own earlier decision in Madhu Limaye v. State of Maharashtra : 1978 CriLJ165 in which it was held (vide para 8) that the power under Section 482 should not be exercised when there is an express bar in some other provision of the Code. The Court in B.S. Joshi's case (supra) also referred to the decision in Surendra Nath Mohanty v. State of Orissa : 1999 CriLJ3496 which held that since the offence under Section 326 IPC is not compoundable the High Court cannot compound the offence.

13. Despite the above decisions this Court in B.S. Joshi's case (supra) relying on its own decision in State of Karnataka v. L. Muniswamy : 1977 CriLJ1125 observed that the High Court under Section 482 Cr.P.C. can quash the criminal proceedings if it comes to the conclusion that the ends of justice so requires e.g. where there would almost be no chance of conviction. In a case under Section 498A IPC if the parties enter into a compromise the chances of an ultimate conviction are bleak, and hence no useful purpose would be served by allowing the criminal proceedings to continue. They should, therefore, be quashed by exercising power under Section 482 Cr.P.C. The Court also relied on the decisions in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre : 1988 CriLJ853 , G.V. Rao v. L.H.V. Prasad (2000) 3 SCC 693 for taking the same view.

14. In B.S. Joshi's case (supra) this Court devised a creative solution to the problem and quashed the proceedings in exercise of its power under Section 482 Cr.P.C. The said decision was followed by this Court in Nikhil Merchant v. Central

Bureau of Investigation and Anr. : (2008)9SCC677 .

15. Shri B.B. Singh, learned Counsel for the respondent submitted that the High Court or even this Court would not be justified in giving directions to quash a criminal proceeding in view of the compromise between the parties when the offence has been expressly made non-compoundable by Section 320 Cr.P.C. He urged that the Court cannot ignore any substantive statutory provision dealing with the subject and cannot issue a writ or a direction in violation of the statute.

16. Ordinarily we would have agreed with Mr. B.B. Singh. The doctrine of judicial restraint which has been emphasized repeatedly by this Court e.g. in *Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.* : 2007(14)SCALE1 , *Government of Andhra Pradesh and Ors. v. Smt. P. Laxmi Devi* : AIR 2008 SC1640 restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ.

17. Since Section 320 Cr.P.C. has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 Cr.P.C. to direct doing something which the Cr.P.C. has expressly prohibited. Section 320(9) Cr.P.C. expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence.

18. However, it has to be pointed out that Section 320 Cr.P.C. cannot be read in isolation. It has to be read along with the other provisions in the Cr.P.C. One such other provision is Section 482 Cr.P.C. which reads:

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.

19. The words 'Nothing in this Code' used in Section 482 is a non obstante clause, and gives it overriding effect over other provisions in the Cr.P.C. The words 'or otherwise to secure the ends of justice' in Section 482 implies that to secure the interest of justice sometimes (though only in very rare cases) the High Court can pass an order in violation of a provision in the Cr.P.C.

20. It is true that in certain decisions of this Court it has been observed that the power under Section 482 Cr.P.C. cannot be exercised to do something which is expressly barred under the Code vide *Mosst. Simrikhia v. Dolley Mukherjee* : (1990)2SCC437a (vide paras 2 & 4), *R.P. Kapur v. State of Punjab* : 1960 CriLJ1239 (vide para 6), *Sooraj Devi v. Pyare Lal and Anr.* : 1981 CriLJ296 (vide para 5) etc.

21. However, in my opinion these judgments cannot be read as a Euclid's formula since it is well settled that judgments of a Court cannot be read mechanically and like a Euclid's theorem vide *Dr. Rajbir Singh Dalal v. Chaudhari Devi Lal University* : (2008)9SCC284 , *Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr.* : (2004)8SCC579 . In rare and exceptional cases a departure can be made from the principle laid down in the decisions referred to in para 20, as observed in *B.S. Joshi's case* (supra), which has also been followed in other decisions e.g. *Nikhil Merchant's case* (supra). Even in the judgment of this Court in *Divisional Manager Aravalli Golf Club* (supra) where emphasis has been laid on judicial restraint it has been mentioned that sometimes judicial activism can be resorted to by the Court where the situation forcefully requires it in the interest of the country or society (vide para 39 of the said judgment). Judicial activism was rightly resorted to by the U.S. Supreme Court in *Brown v. Board of Education* 347 U.S. 483, *Miranda v. Arizona* 384 U.S. 436, *Roe v. Wade* 410 U.S. 113, etc. and by Lord Denning in England in several of his decisions.

22. While in the present case I respectfully agree with my learned brother Hon'ble Kabir J. that the criminal proceedings deserve to be quashed, the question may have to be decided in some subsequent decision or decisions (preferably by a

larger Bench) as to which non-compoundable cases can be quashed under Section 482 Cr.P.C. or Article 226 of the Constitution on the basis that the parties have entered into a compromise.

23. There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. or in writ jurisdiction on the basis of compromise. However, in some other cases, (like those akin to a civil nature) the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot.

24. I am expressing this opinion because Shri B.B. Singh, learned Counsel for the respondent has rightly expressed his concern that the decision in B.S. Joshi's case (supra) should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual.

25. With these observations, I respectfully agree with my learned brother Hon'ble Kabir J. that this appeal is to be allowed and the criminal proceedings in question are to be quashed. Appeal allowed. No costs.