

Case :- APPLICATION U/S 482 No. - 27341 of 2012

Applicant :- Smt. Gomti Devi And Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vinod Sinha

Counsel for Opposite Party :- Govt. Advocate, Rajeev Chaddha

Hon'ble Sanjay Kumar Singh, J.

Heard learned counsel for the applicants, learned Additional Government Advocate for the State/opposite party No.1 and Mr. Rajeev Chaddha, learned counsel for opposite party No. 2 and perused the record with the assistance of learned counsel for the parties.

This application under Section 482 Cr.P.C. has been filed by the applicants for quashing the charge sheet No. 38 of 2012 dated 20.3.2012 as well as entire proceedings of Criminal Case No. 335 of 2012 (State vs. Smt. Madhu and others) arising out of Case Crime No. 97 of 2012, under Section 420 IPC, police station Simbhawali, district Panchsheel Nagar pending in the court of Additional Civil Judge (Junior Division)/Judicial Magistrate-Ist, Garh Mukteshwar, district Panchsheel Nagar.

It is submitted by learned counsel for the applicants that applicant No. 1 is the purchaser of land in dispute from one Madhu Sharma, who is daughter-in-law of opposite party No. 2 and applicant Nos. 2 and 3 are the witnesses of sale deed dated 12.12.2011. It is also submitted that as per prosecution case, opposite party No. 2 lodged first information report through an application under Section 156 (3) Cr.P.C. on 29.2.2012 making allegation inter alia that his daughter-in-law, Madhu Sharma has wrongly and illegally executed a sale deed of plot in question situated at village Goardhanpur, Ghaziabad (now district Hapur) dated 12.12.2011 in favour of applicant No. 1 after the death of his son, Pramod Kumar, in which the Investigating Officer has submitted impugned charge sheet dated 20.3.2012 under Section 420 IPC. The said charge sheet dated 20.3.2012 has been under challenge in the present application before this Court, in which vide order dated 28.8.2012, interim protection was granted to the applicants directing that until ordered otherwise, no coercive action shall be taken against the applicants. It is further submitted by learned counsel for the applicants that during the pendency of this application before this Court, parties concerned have entered into a compromise outside the Court, and thereafter, Civil Suit No. 62 of 2017 filed by grand-son of opposite party No. 2 for cancellation of sale deed dated 12.12.2011 has been decided in terms of

compromise made between the parties concerned vide order dated 4.5.2017, which has been brought on record as annexure No. 2 to the supplementary affidavit dated 27.2.2018. It is also submitted that opposite party No. 2, Om Prakash has also moved an affidavit dated 16.10.2017 before the court of Additional Civil Judge (Junior Division)/Judicial Magistrate, Garhmukteshwar in Case No. 335 of 2012 (State vs. Smt. Gomti Devi and others) mentioning the factum of compromise made between the parties concerned praying therein to decide the case in terms of compromise, as he does not want to get the case proceeded further. On the said affidavit, order dated 11.1.2018 has been passed by the concerned court below accepting the said compromise affidavit on record. The said order dated 11.1.2018 has been brought on record as annexure No. 5 to the supplementary affidavit dated 27.2.2018.

It is also submitted that on account of compromise entered into between the parties concerned, all disputes between them have come to an end and on the aforesaid facts continuance of criminal proceedings pursuant to impugned charge-sheet against the applicants after compromise arrived at between the parties would be a futile exercise, therefore, same is liable to be quashed by this Court.

Learned Additional Government Advocate as well as learned counsel appearing on behalf of opposite party No.2 do not dispute the aforesaid fact. Learned counsel for opposite party No. 2 has also submitted at the Bar that since the parties concerned have settled their dispute as mentioned above, therefore, opposite party No. 2 has no grievance and has no objection in quashing the impugned criminal proceedings against the applicants.

After having heard the arguments of learned counsel for the parties, before proceedings further, it is apposite to give reference of some judgments of the Apex Court, wherein the Apex Court has laid down the guideline for quashing of criminal proceedings arising out of non-compoundable offences under Section 320 Cr.P.C. on the basis of compromise and amicable settlement of criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transaction with an essentially civil flavour dispute, etc. between the parties concerned, which are as follows:-

(i) *Nikhil Merchant vs Central Bureau of Investigation*, 2008 (9) SCC 677.

(ii) *Manoj Sharma vs State and others*, 2008 (16) SCC 1.

(iii) Parbatbhai Aahir @ Parbatbhai Vs. State of Gujarat,
(2017) 9 SCC 641.

(iv) The Apex Court in case of **State of Madhya Pradesh Vs. Laxmi Narayan and others** AIR 2019 SC 1296, considering previous judgments and section 320 Cr.P.C. has laid down guideline for exercising the inherent power under Section 482 Cr.P.C. in case of settlement of dispute between the parties concerned. Paragraph no. 13 of the said judgment is reproduced herein-below:-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved 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;

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc., which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the

(v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

On going through the judgments referred herein above makes it very clear that even in the cases which involved non compoundable offences, their quashing has been approved by the Apex Court if the nature of the offence is such which does not have grave and wider social ramifications and where the dispute is more or less confined between the litigating parties. The inherent jurisdiction of this Court may be suitably exercised if the parties inter-se have mutually decided to bury the hatchet and settle the matter amicably in between them in a criminal litigation emanating from such dispute which are quintessentially of civil nature and other criminal litigations, which do not have grave and deleterious social fall-outs. The Court in the wider public interest may suitably exercise its power in appropriate case and terminate the pending proceedings in order to secure ends of justice or to prevent an abuse of the process of any court. Such positive exercise of the inherent jurisdiction can also find its vindication in a more pragmatic reason. When the complainant of a case or the victim of the offence itself expresses its resolve not to give evidence against the accused in the back drop of the compromise between the parties inter-se or if the fact of inter-se compromise in between the parties is apparent on the face of record, and they are still called upon to depose in the Court, they in all probability, go back on their words and resile from their previous statements, the truthfulness of which is best known only to themselves. They are in such circumstances very likely to eat their words and perjure themselves. The solemn proceedings of the Court often get reduced to a sham exercise and farce in such circumstances. The proceedings can hardly be taken to their logical culmination and in such circumstances, the prospect of the conviction gets lost.

The object of criminal law is primarily to visit the offender with certain consequences. He may be made to suffer punishment or by paying compensation to the sufferer, but the law at the same time also provides that it may not be necessary in every criminal offence to mete out punishment, particularly, if the parties concerned want to bury the hatchet. If they want to move on in a dispute of civil nature on the basis of compromise,

they may be allowed to compound the offences in terms of settlement.

After compromise/settlement arrived at between the parties in the present case, the chance of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution against the applicants to continue, as the same would be futile exercise and a sheer wastage of precious time of the Court. The continuation of a criminal proceedings after compromise would cause oppression and prejudice to the parties concerned.

Considering the facts and circumstances of the case in the light of dictum and guideline laid down by the Apex Court as mentioned above, this Court feels that this is a fit case, where this Court can exercise its inherent power to secure the end of justice. In view of above interest of justice would be met, if the prayer of parties is acceded to and the criminal proceedings and other litigation between the parties is brought to an end.

As a fallout and consequence of above discussions, charge sheet No. 38 of 2012 dated 20.3.2012 as well as entire proceedings of Criminal Case No. 335 of 2012 (State vs. Smt. Madhu and others) arising out of Case Crime No. 97 of 2012, under Section 420 IPC, police station Simbhawali, district Panchsheel Nagar pending in the court of Additional Civil Judge (Junior Division)/Judicial Magistrate-Ist, Garh Mukteshwar, district Panchsheel Nagar against the applicants are hereby quashed.

The instant application under Section 482 Cr.P.C. is allowed in terms of compromise as mentioned above.

Order Date :- 30.10.2019

Sumaira