SUPREME COURT OF INDIA

Shiji @ Pappu & Ors.

Vs.

Radhika & Anr.

Crl.A.No.2094 of 2011

(Cyriac Joseph and T.S.Thakur,JJ.,)

14.11.2011

JUDGMENT

T.S.Thakur,J.,

SLP(Crl.) No.9919 of 2010

1. Leave granted.

2. This appeal arises out of an order passed by the High Court of Kerala at Ernakulam, whereby Criminal M.C. no. 3715 of 2010 filed under Section 482 of the Code of Criminal Procedure, 1973, with a prayer for quashing criminal proceedings in FIR No.6/2010 alleging commission of offences punishable under Sections 354 and 394 of the IPC, has been dismissed. The High Court has taken the view that the offences with which the appellants stand charged, are not 'personal in nature' so as to justify quashing the pending criminal proceedings on the basis of a compromise arrived at between the first informant-complainant and the appellants. The only question that, therefore, arises for consideration is whether the criminal proceedings in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at.

3. Respondent-Radhika filed an oral complaint in the Police Station at Nemom in the State of Kerala, stating that she had accompanied her husband to see a site which the latter had acquired at Punjakari. Upon arrival at the site, her husband and brother Rajesh went inside the plot while she waited for them near the car parked close by. Three youngsters at this stage appeared on a motorbike, one of whom snatched the purse and mobile phone from her hands while the other hit her on the cheek and hand. She raised an alarm that brought her husband and brother rushing to the car by which time the offenders escaped towards Karumam on a motorcycle. The complainant gave the registration number of the motorbike to the police and sought action against the appellants who were named by her in the statement made before the Additional Police Sub- Inspector attached to the Nemom Police Station. FIR No.6/2010 was, on the basis of that statement, registered in the police station

and investigation started. A charge sheet was, in due course, filed against the appellants before the Judicial Magistrate First Class, Neyyattinkara, eventually numbered CC 183/2010.

4. During the pendency of the criminal proceedings aforementioned, the parties appear to have amicably settled the matter among themselves. Criminal M.C. No.3715 of 2010 under Section 482 Cr.P.C. was on that basis filed before the High Court of Kerala at Ernakulam for quashing of the complaint pending before the Judicial Magistrate First Class, Neyyattinkara. That prayer was made primarily on the premise that appellant No.1 Shiji @ Pappu who also owns a parcel of land adjacent to the property purchased by the respondent- Radhika, had some dispute in regard to the road leading to the two properties. An altercation had in that connection taken place between the appellants on the one hand and the husband and brother of the respondent on the other, culminating in the registration of the FIR mentioned above. The petition further stated that all disputes civil and criminal between the parties had been settled amicably and that the respondent had no grievance against the appellants in relation to the access to the plots in question and that the respondent had no objection to the criminal proceedings against the appellants being quashed by the High Court in exercise of its power under Section 482 Cr.P.C. The petition further stated that the disputes between the parties being personal in nature the same could be taken as settled and the proceedings put to an end relying upon the decision of this Court in Madan Mohan Abbot v. State of Punjab (2008) 4 SCC 582. An affidavit sworn by the respondent stating that the matter stood settled between the parties was also filed by the appellants before the High Court. The High Court has upon consideration declined the prayer made by the appellants holding that the offences committed by the appellants were not of a personal nature so as to justify quashing of the proceedings in exercise of its extra-ordinary jurisdiction under Section 482 Cr.P.C.

5. We have heard learned counsel for the parties and perused the impugned order. Section 320 of the Cr.P.C. enlists offences that are compoundable with the permission of the Court before whom the prosecution is pending and those that can be compounded even without such permission. An offence punishable under Section 354 of the IPC is in terms of Section 320(2) of the Code compoundable at the instance of the woman against whom the offence is committed. To that extent, therefore, there is no difficulty in either quashing the proceedings or compounding the offence under Section 354, of which the appellants are accused, having regard to the fact that the alleged victim of the offence has settled the matter with the alleged assailants. An offence punishable under Section 394 IPC is not, however, compoundable with or without the permission of the Court concerned. The question is whether the High Court could and ought to have exercised its power under Section 482 Cr.P.C. for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at.

6. Learned counsel for the appellants submitted that the first informant-complainant had, in the affidavit filed before this Court, clearly admitted that the complaint in question was lodged by her on account of a misunderstanding and misconception about the facts and that the offences of which the appellants stand accused are purely personal in nature arising out of personal disputes between the parties. It was also evident that the complainant was no longer supporting the version on which the prosecution rested its case against the appellants.

According to the learned counsel there was no question of the Trial Court recording a conviction against the appellants in the light of what the complainant had stated on affidavit. That was all the more so, when the other two prosecution witnesses were none other than the husband and the brother of the complainant who too were not supporting the charges against the appellants. Such being the case, continuance of criminal trial against the appellants was nothing but an abuse of the process of law and waste of valuable time of the Courts below. Exercise of power by the High Court under Section 482 Cr.P.C. to prevent such abuse is perfectly justified, contended the learned counsel. Reliance in support was placed by the learned counsel upon the decision of this Court in Madan Mohan Abbot's case (supra).

7. This Court has, in several decisions, declared that offences under Section 320 Cr.P.C. which are not compoundable with or without the permission of the Court cannot be allowed to be compounded. In *Ram Lal and Anr. v. State of J & K*[1] this Court referred to Section 320(9) of the Cr.P.C. to declare that such offences as are made compoundable under Section 320 can alone be compounded and none else. This Court declared two earlier decisions rendered in *Y. Suresh Babu v. State of Andhra Pradesh*[2], and Mahesh Chand v. State of Rajasthan, 1990 Supp. SCC 681, to be per incuriam in as much as the same permitted composition of offences not otherwise compoundable under Section 320 of the Cr.P.C. What is important, however, is that in Ram Lal's case (supra) the parties had settled the dispute among themselves after the appellants stood convicted under Section 326 IPC. The mutual settlement was then sought to be made a basis for compounding of the offence in appeal arising out of the order of conviction and sentence imposed upon the accused. This Court observed that since the offence was non- compoundable, the court could not permit the same to be compounded, in the teeth of Section 320. Even so, the compromise was taken as an extenuating circumstance which the court took into consideration to reduce the punishment awarded to the appellant to the period already undergone. To the same effect is the decision of this Court in Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667; where this Court said:

> "14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

8. There is another line of decisions in which this Court has taken note of the compromise arrived at between the parties and quashed the prosecution in exercise of powers vested in the High Court under Section 482 Cr.P.C. In *State of Karnataka v. L. Muniswamy & Ors*[3]. this Court held that the High Court was entitled to quash the proceedings if it came to the conclusion that the ends of justice so required. This Court observed:

> ".....Section 482 of the new Code, which corresponds to Section 561-A o the Code of 1898, provides that:

> "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."

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

9. In *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors*[4]. this Court held that the High Court should take into account any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue or quash the prosecution where in its opinion the chances of an ultimate conviction are bleak. This Court observed:

> "7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

10. In *B.S Joshi and Ors. v. State of Haryana*[5], the question that fell for consideration before this Court was whether the inherent powers vested in the High Court under Section 482 Cr.P.C. could be exercised to quash non-compoundable offences. The High Court had, in that case relying upon the decision of this Court in *Madhu Limaye v. The State of Maharashtra*[6], held that since offences under Sections 498-A and 406 IPC were not compoundable, it was not permissible in law to quash the FIR on the ground that there has been a settlement between the parties. This Court declared that the decisions in Madhu Limaye's case (supra)

had been misread and misapplied by the High Court and that the judgment of this Court in Madhu Limaye's case (supra) clearly supported the view that nothing contained in Section 320(2) can limit or affect the exercise of inherent power of the High Court if interference by the High Court was considered necessary for the parties to secure the ends of justice. This Court observed:

> "8. It is, thus, clear that Madhu Limaye case (1977) 4 SC 551 does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.
>
> 15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

11. That brings to the decision of this Court in Madan Mohan Abbot' case (supra) whereby the High Court had declined the prayer for quashing of the prosecution for offences punishable under Sections 379, 406, 409, 418, 506/34 IPC despite a compromise entered into between the complainant and the accused. The High Court had taken the view that since the offence punishable under Section 406 was not compoundable the settlement between the parties could not be recognized nor the pending proceedings quashed. This Court summed up the approach to be adopted in such cases in the following words:

> "6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.
>
> 7. We see from the impugned order that the learned Judge has confused compounding of an offence with the quashing of proceedings. The outer limit of Rs 250 which has led to the dismissal of the application is an irrelevant factor in the later case. We, accordingly, allow the appeal and in the peculiar facts of the case direct that FIR No. 155 dated 17-11-2001 PS Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed."

12. To the same effect is the decision of this Court in Nikhil Merchant v. CBI 2008(9) SCC 677 where relying upon the decision in B.S. Joshi (supra), this Court took note of the

settlement arrived at between the parties and quashed the criminal proceedings for offences punishable under Sections 420, 467, 468 and 471 read with Section 120-B of IPC and held that since the criminal proceedings had the overtone of a civil dispute which had been amicably settled between the parties it was a fit case where technicality should not be allowed to stand in the way of quashing of the criminal proceedings since the continuance of the same after the compromise arrived at between the parties would be a futile exercise. We may also at this stage refer to the decision of this Court in *Manoj Sharma v. State and Ors*[7]. This court observed:

> "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. Xxxxxxxxxxxxx
>
> 9. As we have indicated hereinbefore, the exercise of power under Section 482 CrPC of Article 226 of the Constitution is discretionary to be exercised in the facts of each case. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility....."

13. It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to

appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

14. Coming to the case at hand we are of the view that the incident in question had its genesis in a dispute relating to the access to the two plots which are adjacent to each other. It was not a case of broad day light robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them. That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some "misunderstanding and misconception" will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eye witnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 Cr.P.C. could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below.

15. We accordingly allow this appeal, set aside the impugned order passed by the High Court and quash the prosecution in CC 183/2010 pending in the Court of Judicial Magistrate, First Class, Neyyattinkara.

Judgment Referred.

[1]*(1999) 2 SCC 0213*
[2]*JT (1987) 2 SC 0361*
[3]*(1977) 2 SCC 0699*
[4]*(1988) 1 SCC 0692*
[5]*(2003) 4 SCC 0675*
[6]*(1977) 4 SC 0551*
[7]*(2008) 16 SCC 0001*