

(2016) 05 RAJ CK 0134

RAJASTHAN HIGH COURT

Case No: Criminal Misc. Petition No. 1352 of 2016

Kheem Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: May 25, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 308, Section 34, Section 367

Citation: (2016) 4 CriLR 2185

Hon'ble Judges: Mr. Vijay Bishnoi, J.

Bench: Single Bench

Advocate: Mr. M.S. Panwar, Public Prosecutor, for the Respondent; Mr. P.K. Sharma, Advocate, for the Respondent No. 2; Mr. H.S. Shrimali, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

Mr. Vijay Bishnoi, J. - This criminal misc. petition under Section 482 Cr.P.C. has been preferred by the petitioners with a prayer for quashing the proceedings pending against the petitioners before the Sessions Judge, Jaisalmer (hereinafter referred to as "the trial court") in Criminal Case No.02/2009, whereby, the trial court vide order dated 19.3.2013 has attested the compromise for the offences punishable under Sections 325, 323 and 342 IPC but refused to attest the compromise for the offences punishable under Sections 308/34 and 367 as the same are not compoundable.

2. Brief facts of the case are that on a complaint lodged at the instance of respondent No.2, the police has registered an FIR against the petitioners. After investigation, the police filed charge-sheet against the petitioners for offences punishable under Sections 367, 342, 323, 325 and 308/34 IPC in the concerned court, wherein, the trial is pending against the petitioners. During the pendency of the trial, an application was preferred on behalf of the petitioners as well as the respondent No.2 while stating that both the parties have entered into compromise

and, therefore, the proceedings pending against the petitioners may be terminated. The learned trial court vide order dated 19.3.2013 allowed the parties to compound the offences under Sections 325, 323 and 342 IPC, however, rejected the application so far as it relates to compounding the offences under Sections 308/34 and 367 IPC.

3. The present criminal misc. petition has been preferred by the petitioners for quashing the said proceedings against them.

4. Learned counsel for the petitioners has argued that as the complainant-respondent No.2 and the petitioners have already entered into compromise and on the basis of it, the petitioners have been acquitted for the offences punishable under Sections 325, 323 and 342 IPC. It is also argued that no useful purpose would be served by continuing the trial against the petitioners for the offences punishable under Sections 308/34 and 367 IPC because the same may derail the compromise arrived at between the parties.

5. The learned counsel for the respondent No.2 has admitted that the parties have already entered into compromise and the respondent No.2 does not want to press the charges levelled against the petitioners in relation to offences punishable under Sections 308/34 and 367 IPC.

6. The Hon"ble Apex Court while answering a reference in the case of **Gian Singh v. State of Punjab & Anr. reported in JT 2012(9) 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 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 victim's 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 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 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."

7. Having considered the facts and circumstances of the case and looking to the fact that the petitioners and respondent no.2 have entered into compromise, there is no possibility of accused-petitioners being convicted in the case pending against them.

8. 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 petitioners can be quashed while exercising powers under Section 482 Cr.P.C.

9. Accordingly, this criminal misc. petition is allowed and the criminal proceedings pending against the petitioners before the Sessions Judge, Jaisalmer in Criminal Case No.02/2009 for the offences punishable under Sections 308/34 and 367 IPC are hereby quashed.

10. Stay petition also stands disposed of.