

Umesh Vs The State of Karnataka and Another

Court: Karnataka High Court (Dharwad Bench)

Date of Decision: Jan. 10, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482
Penal Code, 1860 (IPC) â€” Section 307, 320, 323, 498A, 504

Citation: (2014) 2 KCCR 1123

Hon'ble Judges: K.N. Phaneendra, J

Bench: Single Bench

Advocate: G.A. Holeyannavar, S.C. Koppad and Vasant G. Holeyannavar, Advocate for the Appellant; V.M. Banakar, Additional State Public Prosecutor for Respondent-1, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.N. Phaneendra, J.

Heard learned Counsel for the petitioner and learned Additional State Public Prosecutor for respondent No. 1.

Respondent No. 2 is present before Court. The Court also enquired her.

2. Learned Counsel for respondent No. 2 has filed I.A. No. 3/2014 seeking amendment of the husband's name of respondent No. 2 as "Umesh

Kittur" instead of "Basavaraj Kittur". The said application is allowed. Learned Counsel for the petitioner is permitted to amend the cause title as

proposed in the application.

3. The learned Counsel for petitioner submits that petitioner and respondent No. 2 have compromised the matter and they are living together after

the incident. Though the respondent No. 2 has lodged a complaint against the petitioner - husband for the offences punishable under Sections

498A, 323, 504, 506 and 307 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C." for brevity). She does not want to prosecute

her husband before the Court of law, as they have joined together and living happily along with their two children. In fact they have filed a

compromise petition before this Court u/s 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C. for brevity), in which he

has categorically stated that after filing of the case against the petitioner by respondent No. 2, the petitioner and respondent No. 2 have

compromised between themselves and they are living happily along with their children. The dispute between them in no more res integra.

Therefore, the respondent No. 2 has no objection to quash the entire proceedings, pending before Sessions Court in S.C. No. 65/2013.

4. The brief allegations made against the petitioner are that, on 11.02.2013 at about 9.30 p.m. the accused/petitioner herein came to the house in

an intoxicated manner and started abusing the respondent No. 2 (wife) herein on the ground that she has refused to pay some money to the

petitioner. He caught hold her head and assaulted her with his hands and kicked her with his legs. When the mother of respondent No. 2 came to

rescue respondent No. 2, he has threatened her with dire consequences of killing them. It was also alleged that the accused - petitioner has chased

respondent No. 2 by holding the knife who went inside the bed room and locked from inside. The accused - petitioner went to kitchen and opened

the gas cylinder and leaked out the gas and made attempts to lit fire in order to kill all the inmates in the house. On these allegations a complaint

came to be lodged and police have registered a case in Crime No. 13/2013 and after due investigation a chargesheet has been filed against the

petitioner herein. After committal proceedings, a sessions case has been registered in S.C. No. 65/2013 on the file of Prl. Sessions Judge,

Dharwad. The learned Sessions Judge after hearing the arguments with regard to framing of charges has framed charges against the accused for the

offences punishable under Sections 498A, 323, 504, 506 and 307 of I.P.C. and set down the case for recording the evidence of prosecution

witnesses. At this juncture, petitioner has approached this Court seeking quashing of entire proceedings before the Sessions Judge on the ground

that the matter has been compromised.

5. The learned Counsel in order to persuade this Court has relied upon several rulings and argued that the High Court and Apex Court have

shown some latitude so far as the matrimonial disputes between the parties are concerned and exercised the powers u/s 482 of Cr.P.C. to quash

the proceedings in order to enable the parties to live happily. It is, in my opinion, just and necessary to look into the said rulings in order to

ascertain whether the circumstances are in existence in order to exercise the powers u/s 482 of Cr.P.C. as per the guidelines of the Hon'ble

Supreme Court.

6. The Apex Court in a case reported in Gian Singh Vs. State of Punjab and Another, has laid down certain principles that under what facts and

circumstances the Court can exercise powers u/s 482 of Cr.P.C. in order to permit the parties to compound the offences even though the offences

are non-compoundable in nature. It goes without saying so far as this case is concerned. The offences alleged against petitioner by respondent No.

2 are non-compoundable in nature. Paragraph 61 of the judgment of Hon^{ble} Apex Court reads thus-

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 u/s 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 the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes

like the 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 predominatingly civil flavour

stand on a 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, the 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 the 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.

(emphasis supplied)

7. This Court had an occasion to deal with similar set of facts, which is involved in this particular case. In a case reported in Prashant Vs. The State

of Karnataka and Another, , wherein it has been held that-

CODE OF CRIMINAL PROCEDURE, 1973--Section 482 --To quash the proceeding registered on the basis of FIR for the offences

punishable under Sections 498A, 504, 307 of I.P.C.--Petitioner is the husband of the second respondent--Facts--Petitioner alleged to be flirting

with other women and started ill-treating the second respondent--Petitioner was arrested on this background--As on date, petitioner and second

respondent have reconciled and are living peacefully without any problems between them--Objection--Maintainability of petition--Non-

compoundable offences--Question of quashing the proceedings and seeking to initiate and withdraw proceeding at their, whim and fancy would

make a mockery of justice system.

8. This Court while dealing with the matter relied upon plethora of decisions ultimately held that particularly in matrimonial matters Court can

exercise powers u/s 482 of Cr.P.C. This Court has also relied upon the rulings of Apex Court, reported in-- Madan Mohan Abbot Vs. State of

Punjab, .

Manoj Sharma Vs. State and Others, .

In view of the above said principles, the parties are permitted to compound the offences.

9. On meaningful reading and understanding of the above said cases the Apex Court has laid down the principles, particularly, as quoted above at

para 61, that the High Court can quash the criminal proceedings, if in its view the compromise between the offender and the victim is genuine, if

there are very remote and bleak chances of conviction, if continuation of criminal case would put the accused to great oppression and if any

prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement of compromise with

the victim. Therefore, the Apex Court has cautioned that the High Court must consider the facts of individual case to ascertain whether it would be

unfair or contrary to justice to continue with the criminal proceedings or continuation of the criminal proceedings would tantamount to abuse of

process of law. Despite settlement between the parties the Apex Court has observed that under the provisions of Prevention of Corruption Act, in

the cases of dacoity and in the serious cases where public interest is affected in such cases the Court should be very careful in exercising the

powers u/s 482 of Cr.P.C.

10. In the above said backdrop, the present case has to be analysed. It is a case between the husband and wife, as already noted above, the wife

has filed complaint against the husband. There was no injury as such caused to the wife in this case. It was only an attempt made by accused --

petitioner herein to lit fire after leaking gas from the cylinder. This was ultimately stopped by the inmates of petitioner herein. So far as Sections

498A and 504 of I.P.C. are concerned, parties have compounded the said offences between each other. When it is categorically said that soon

after the incident the parties have compounded the matter and they are happily residing together, in the event if the sessions case is continued there

is no chance of respondent No. 2, who is the sole pivotal witness, supporting the case of prosecution. As could be seen from the entire papers on

record, the entire case of prosecution stands on the statement of respondent No. 2. If she is not willing to continue the case there are very remote

chances of conviction in this case. Moreover, it is quite natural that quarrel takes place between husband and wife for a silly reason. Sometimes

due to verbal altercation between the husband and wife, the husband may lose temper and control over his mind and try to do some unpleasant

acts. Such acts should be controlled by wife in order to benefit the family members. In the better interest of children if the parties have

compounded the offences then the Court should give its affirmative seal to such a compromise. Looking to the circumstances prevailing in this

particular case and also applying the principles laid down by the Apex Court and as well as this Court in the decisions cited above, I am of the

considered opinion that this is also a fit case where this Court can exercise the powers u/s 482 of Cr.P.C. to quash the proceedings as sought for.

This Court trust that, compounding of the offences by petitioner as well as the respondent No. 2 is in the better interest and benefit of entire family.

This Court trust and hope that they will not indulge in any such unpleasant activities in future. The children of petitioner and respondent No. 2 are

also present before the Court. After enquiry, they submitted that their parents are looking after them with all love and affection. They are school

going children and their future is in the hands of petitioner and respondent No. 2. Parents are the pillars of family and if the pillars are not strong the

entire family will collapse. Therefore, bearing in mind these materials on record, in my opinion, with a direction to petitioner and respondent No. 2

not to repeat any such acts in future, I prefer to quash the proceedings. Hence, I pass the following:

ORDER

Petition filed u/s 482 of Cr.P.C. is allowed.

The proceedings in S.C. No. 65/2013 pending before Prl. Sessions Judge, Dharwad is quashed. As the accused is already released on bail, his

bail bonds and surety bonds also stand cancelled.

In view of disposal of main petition, I.A. Nos. 2/2014 and 1/2014 are also disposed of.