

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1106 of 2021
with
I.A. No. 3240 of 2021

Ujjwal Kumar Petitioner
Versus
1. The State of Jharkhand
2. Sangita Devi Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Lukesh Kumar, Advocate
For the State : Mr. Shailendra Kumar Tiwari, A.P.P.
For the O.P. No. 2 : Mr. Abhay Prakash, Advocate.

02/ 07.09.2021 Heard Mr. Lukesh Kumar, learned counsel appearing for the petitioner, Mr. Shailendra Kumar Tiwari, learned counsel appearing for the State as also Mr. Abhay Prakash, learned counsel appearing for the O.P. No. 2.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. This criminal miscellaneous petition has been filed for quashing of the entire criminal proceedings arising out of Latehar P.S. Case No. 160 of 2020, registered under Sections 500, 501 and 509 of the Indian Penal Code and Section 67(A) of the Information Technology Act, pending in the Court of learned Chief Judicial Magistrate, Latehar.

4. On the written report of the informant, who is O.P. No. 2 in this case, the FIR was lodged.

On 08.06.2020 at about 01.28 P.M., 02.55 P.M. and 04.17 P.M. there were 40 obscene video clips were sent on whatsapp in her mobile phone from the holder of Mobile No. 7542908662 and the said number was registered as Rajababu on Truecaller. When her family member tried to investigate about the clips from the mobile number holder, the person started cross-questioning about the evidence that he sent the video clips. The alleged video clips were got downloaded on 17.06.2020 only as the informant's mobile number was not recharged with internet pack earlier. She further stated that due to obscene video clips, informant's reputation got affected amongst family and society. She felt uncomfortable and got depressed, she felt so bad that she even started thinking of attempting suicide.

5. On the basis of said written report, an FIR bearing Latehar P.S. Case No. 160 of 2020 dated 01.07.2020 was registered under Sections 500, 501 and 509 of the Indian Penal Code and Section 67(A) of the Information Technology Act against the petitioner.

6. Mr. Lukesh Kumar, learned counsel appearing for the petitioner submits that Sections 500, 501 and 509 of the Indian Penal Code are compoundable, but Section 67(A) of the Information Technology Act is not compoundable.

7. Mr. Abhay Prakash, learned counsel appearing for the O.P. No. 2 accepts the arguments of learned counsel appearing for the petitioner. Mr. Prakash submits that in misconception the said case was filed and now the O.P. No. 2 does not want to proceed with the present case.

8. Mr. Lukesh Kumar, learned counsel appearing for the petitioner submits that this is not a case of heinous crime i.e. murder, rape, dacoity etc. and also no State policy is involved in this case. Learned counsel further submits that the dispute of the present case is purely private in nature and with the intervention of the well wishers they have compromised the matter and harmonious relation has been restored amongst them. Learned counsel also submits that one interlocutory application being I.A. No. 3240 of 2021 has been filed jointly for compromising their case.

9. Mr. Shailendra Kumar Tiwari, learned counsel appearing for the State submits that Section 67(A) of the Information Technology Act is not compoundable and the parties have direct filed a joint compromise petition in this case before this Court.

10. In view of the facts of this case, this Court has examined the submission of learned counsel appearing for the parties and also the scope of power conferred under Section 482 Cr.P.C. Reference in this regard may be made in the case of ***Gian Singh Vs. State of Punjab & Anr.*** reported in **(2012) 10 SCC 303**, wherein the Hon'ble Supreme Court in paragraphs-58 and 61 has held as follows:-

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public

and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

.....
61. 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 FIR 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 predominately 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 the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

11. On perusal of the joint compromise petition, it transpires that the petitioner and the O.P. No. 2 have mutually decided to compromise the matter, which has been discussed in paragraphs-3, 4 and 5 of the said petition. There is no doubt that Section 67(A) of the Information Technology Act is not compoundable, as the said Section clearly stipulates punishment for publishing and transmitting obscene material in electronic form, but since the parties have settled their dispute between them and it is not a case of public policy and also it is not a case of heinous crime i.e.

murder, rape, dacoity etc., the case of the petitioner is fully covered with the judgment particularly in paras-58 and 61 of the *Gian Singh's case (Supra)*.

12. In such a situation, this is a fit case of exercising discretionary power under Section 482 Cr.P.C., as both the parties have amicably settled their dispute between the parties, for which, a joint compromise petition has also been filed and also to secure the ends of justice or to prevent the abuse of process of any court. Considering that there is harmonious relationship restored between the parties and both the parties have decided not to pursue this case, the Court can exercise its power under Section 482 Cr.P.C.

13. Accordingly, the entire criminal proceedings arising out of Latehar P.S. Case No. 160 of 2020, registered under Sections 500, 501 and 509 of the Indian Penal Code and Section 67(A) of the Information Technology Act, pending in the Court of learned Chief Judicial Magistrate, Latehar, are hereby quashed.

14. This criminal miscellaneous petition stands allowed and disposed of. The aforesaid interlocutory application also stands disposed of.

(Sanjay Kumar Dwivedi, J.)