

Allahabad High Court

Khajan Singh And Another Opposite Party :- State of U.P.

Hon'ble Mrs. Manju Rani Chauhan, J.

On 05.10.2020, learned counsel for the opposite party no.2 was directed to file short counter affidavit along with vakalatnama in the Registry, which has been filed on 06.10.2020 as is clear from the receipt, which is being placed on record. Learned counsel for the applicants is permitted to make necessary corrections in the prayer clause of the application during the course of the day. Heard Mr. Pankaj Sharma, learned counsel for the applicants, the learned Additional Government Advocate for the State, and Mr. Deepak Kumar, Advocate holding brief of Mr. R.C. Yadav, learned counsel for opposite party no.2. This application under Section 482 Cr.P.C. has been filed challenging the impugned order dated 14.02.2019 passed by learned Chief Judicial Magistrate, Hathras as well as the entire proceedings of Case. 5 of 2008 (State Vs. Khajan Singh & Others), arising out of Case Crime No. 411 of 2007, under Sections 363, 366, 376 I.P.C., Police Station-Hathras, DistrictHathras, pending in the Court of Chief Judicial Magistrate, Hathras on the basis of the compromise.

In compliance of the order of the Court dated 5th October, 2020, the applicant no.1, namely, Khajan Singh and the opposite party no.2, namely, Rekha are present in Court today, who have been identified by their counsel and their signatures have also been attested by them. They state that they have married and are living happily as husband and wife and first information report was lodged by father of opposite party no.2 with false and frivolous allegations. But after compromise, an application was moved before the concerned court below, which has been rejected on 14.02.2019, on the ground that the court does not have jurisdiction to pass order in such compromise in non-compoundable offences.

On the instruction received, learned counsel for applicants submits that since the parties have entered into a compromise, opposite party no. 2 has no objection, if the proceedings in the aforesaid case are quashed. Before proceeding any further it shall be apt to make a brief reference to the case of Gian Singh Vs. State of Punjab reported in (2012) 10 SCC 303, wherein the Apex Court has categorically held that the compromise can be made between the

parties even in respect of certain cognizable and non compoundable offences. The relevant portion of the said judgment of the Apex Court reads as follows:- "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." In the aforesaid judgments, the Apex Court has categorically held that compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. Reference may also be made to the decision given by this Court in Shaifullah and Others Vs. State of U.P. & Another; 2013 (83) ACC 278 in which the law expounded by the Apex court in the aforesaid cases has been explained in detail. Considering the facts and circumstances of the case, as noted herein above, and also the submissions made by the counsel for the parties, the court is of the considered opinion that no useful purpose shall be served by prolonging the proceedings of the above mentioned criminal case as the parties have already settled their dispute. Accordingly, impugned order dated 14.02.2019 passed by learned Chief Judicial Magistrate, Hathras is set aside and the proceedings of Case. 5 of 2008 (State Vs. Khajan Singh & Others), arising out of Case Crime No. 411 of 2007, under Sections 363, 366, 376 I.P.C., Police Station-Hathras, DistrictHathras, pending in the Court of Chief Judicial Magistrate, Hathras, are hereby quashed. This application U/s 482 Cr.P.C. is, accordingly, allowed. There shall be no order as to costs.

Order Date :- 8.10.2020

JK Yadav