

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF FEBRUARY 2017

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.9463 OF 2016

BETWEEN:

1. SONI NIHAL DINESH BHAI
S/O. SONI DINESH BHAI,
AGED ABOUT 21 YEARS,
2. SMT. SMITHA RUDANI
W/O. SONI NIHAL DINESH BHAI,
AGED ABOUT 19 YEARS,

PRESENTLY BOTH ARE R/AT MANINAGAR,
NAKATHRANA TALUK,
KUTCH DISTRICT, GUJARATH-370 615. ... PETITIONERS

(By Sri: NAGARAJ DAMODAR, ADVOCATE)

AND

1. SRI. SANDEEP PATEL
S/O. KESHAVALAL,
AGED ABOUT 29 YEARS,
"NUTAN NILAYA",
DWARAKA PLAZA, NELAMANGALA TOWN,
NELAMANGALA -562 123.
2. THE STATE OF KARNATAKA
BY NELAMANGALA TOWN POLICE,
BANGALORE-560 001,
REPT BY ITS STATE PUBLIC PROSECUTOR.

... RESPONDENTS

(By Sri: VIJAYAKUMAR MAJAGE, ADDL. SPP FOR R2)
SRI: SHIVANANDA D.S., ADVOCATE FOR R1

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS LAUNCHED AGAINST THE ACCUSED I.E. THE PETR. NO.1 HEREIN IN SPL.C.NO.104/2016 REGISTERED BY THE RESPONDENT NO.2 POLICE U/S 366(A),376 OF IPC AND SEC.6 OF POCSO ACT AND NOW PENDING ON THE FILE OF II ADDL. DIST. AND S.J., BENGALURU RURAL DISTRICT, BENGALURU.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Whether the High Court has power under section 482 of Cr.P.C. for quashing of criminal proceedings for serious offence like rape, on the ground of settlement between an offender and a victim is the question that arises for consideration in this petition.

2. The facts giving raise to the petition are as follows:-

On 19.8.2015, respondent No.1 – the uncle of the victim lodged a complaint before the Nelamangala Town Police Station alleging missing of his niece since 19.8.2015. On the basis of

this complaint, a missing case was registered by the Nelamangala Police Station in Cr.No.245/2015. Thereafter, the respondent -Police recorded the further statement of the victim on 27.8.2015 wherein the victim specifically alleged that when she was going to the College, she came to know the petitioner No.1 herein through Facebook and on 19.8.2015 at about 5.00 p.m., the petitioner No.1 came near her house and made her to sit in a taxi and took her to Airport. But as they did not get the flight to Gujarat, he took her in a taxi to BTM Layout and booked a room in a lodge and in the night, he committed forcible intercourse on her and on the next day morning, he took her in another taxi on the pretext of taking her to Gujarat and left her at Hubli and at that time, he handed over Rs.3,000/- to her. The victim has further alleged that from Hubli, she went to Pune and from there to Ahmedabad and on 23.8.2015 in the mid-night, she reached her home. Based on the statement of the victim the Police incorporated charges under section 366-A and 376 of Indian Penal Code and section 6 of POCSO Act. After investigation, the police laid the charge-sheet against the

petitioner No.1 for the above offences before the Special Court and the same is numbered as Spl.Case No.104/2016.

3. Petitioner No.1 – the sole accused and the victim (Petitioner No.2) have presented a joint petition before this court under section 482 of Cr.P.C., seeking to quash the entire proceedings launched against petitioner No.1 in Spl.Case No.104/2016. In the petition, it is stated that the petitioner No.1 who in love with the petitioner No.2 and he had convinced his parents and had got their consent for his marriage with the petitioner No.2. But on coming to know about the plan hatched by parents of Petitioner No.2 to marry her to a person of her caste, he came over to Nelamangala Town in search of petitioner No.2. Petitioner No.2 was also against the marriage arranged by her parents, hence she eloped along with the petitioner No.1 on 19.08.2015. On 23.08.2015, the father of the petitioner No.2 brought Petitioner No.2 to Bengaluru and on 27.08.2015, respondent No.2 Police coming under the influence of the father of the petitioner No.2 recorded a false statement of petitioner

No.2, falsely alleging that the petitioner No.1 has committed rape on the petitioner No.2 in a lodge at Bengaluru.

4. It is further stated that the respondent Police coming under the influence of the father and the uncle of petitioner No.2 have filed charge-sheet alleging falsely that petitioner No.1 has committed offences punishable under sections 366-A, 376 of Indian Penal Code r/w. section 6 of POCSO Act. It is further stated that petitioner Nos.1 and 2 have contracted marriage and are living as husband and wife. But the Special Case No.104/2016 which has been foisted against petitioner No.1 on the basis of the false charge-sheet filed by respondent No.2 is causing hardship to the petitioner as the petitioner No.1 has to travel all the way from Nakatrana in Kutch district, Gujarat near India-Pakistan border to attend the court at Bengaluru. On these grounds, the petitioners have sought for quashing of the proceedings.

5. I have heard the learned counsel for the petitioners and the learned Spl.SPP.

6. Placing reliance on the decision of the Hon'ble Supreme Court in the case of **NARINDER SINGH vs. STATE OF PUNJAB & Another** reported in **(2014) 6 SCC 466**, the learned counsel for the petitioners submits that the allegation made against the petitioners are totally false and baseless. Petitioner No.1 who is accused of alleged offence has already married the victim, as evidenced in the certificate of marriage produced along with the petition. Under the said circumstances, entire proceedings deserve to be quashed. Even otherwise, it is the submission of the learned counsel that having regard to the fact that the victim herself has denied the incident and has filed a joint petition disputing the allegations made against petitioner No.1, there is no likelihood of petitioner No.1 being convicted for the alleged offence and the entire exercise carried on before the Trial Court would be an exercise in futility and therefore, in the interest of justice, the entire proceedings require to be quashed.

7. Learned Addl. State Public Prosecutor however has seriously opposed the petition contending that the offence alleged against the petitioner is a serious offence and any

settlement between the offender and the victim cannot have any legal sanction and therefore, merely on the ground of the alleged marriage between the petitioner No.1 and the victim, the criminal proceedings cannot be quashed at this stage.

8. I have bestowed my careful consideration to the submissions made by the learned counsel for the parties.

9. In what cases power to quash the criminal proceedings or complaint or FIR may be exercised where the offender and the victim have settled their dispute is no more *res integra* in view of the decision of the Hon'ble Supreme Court of India in the case of **GIAN SINGH vs. STATE OF PUNJAB** reported in **(2012) 10 SCC 303**. After analyzing the whole gamut of the case law on the subject, in para 61 of the said judgment, the Hon'ble Supreme Court has summarized the legal position as under:-

"The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceedings 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." (emphasis supplied)

10. The principles laid down in the above decision are reiterated in the later decision rendered in the case of ***NARINDER SINGH vs. STATE OF PUNJAB & Others*** reported in ***(2014) 6 SCC 466***. As to under what circumstances the criminal proceedings in a non-compoundable case could be quashed when there is settlement between the parties, the court has referred to the guidelines laid down in the case of Gian Singh and has held that if the offence is heinous or serious in nature, then it has to be treated as crime against the society and not against the individual alone. Then it becomes the solemn duty of the State to punish the crime doer. It is held by the Hon'ble Supreme Court *"that even if there is a settlement/compromise between the perpetrator of the crime and the victim, that is of no consequence."*

11. In the said case, the Hon'ble Supreme court has considered whether quashing of proceedings under section 307 of Indian Penal Code could be held as falling under the category of heinous and serious offence. Analyzing the various aspects of

the prosecution case, the Hon'ble Supreme Court has held as under:

"29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure;

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender."

12. Rape, undisputedly, is one of the most depraved act.

It is not only an offence against an individual, it is categorized as

an offence against the society at large. In the instant case, petitioner No.1 is accused of committing forcible rape against the petitioner No.2 who was below 13 years of age as on the date of commission of the offence. The allegations made against the petitioner No.1 squarely fall within clause Sixthly of section 376 of Indian Penal Code. Hence, even though there is a settlement between the parties, and the parties are stated to have been married and are living together, the criminal proceedings initiated for the alleged offence cannot be quashed. In view of the ratio laid down in the above decisions of the Hon'ble Supreme Court, the power under section 482 of Cr.P.C. cannot be exercised in the present set of facts.

Hence, the criminal petition is dismissed.

**Sd/-
JUDGE**

BSS.