Anil Mishra vs State Of U.P. on 1 March, 2024

Author: Vikram Nath

Bench: Vikram Nath

2024 INSC 189

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1335 OF 2024
[Arising out of SLP (Crl.) No(s). 16426 of 2023]

ANIL MISHRA …APPELLANT(S)

VERSUS

STATE OF U.P. & ORS. …RESPONDENT(S)

ORDER

1. Leave granted.

2. The present appeal is arising out of order dated 06.04.2023 passed by the High Court of Judicature at Allahabad (the "High Court") in an application under Section 482 of the Code of Criminal Procedure, 1973 ("CrPC") bearing number 38114 of 2022, titled 'Jitendra Mishra @ Sanjay and Ors. Vs. State of Uttar Pradesh and Anr.' (the "Impugned Order").

3. The facts of the case reveal that the Appellant herein 966 of 1999 under Section(s) 364, 147, 148, 149 & 323 of the Neetu Khajuria Date: 2024.03.09 12:34:27 IST Reason:

> Indian Penal Code, 1860 ("IPC") against Respondent Nos. 2 to 4 (the "Accused Persons") alleging inter alia that (i) the Appellant and Respondent No. 5 were beaten-up and accordingly, injured by Accused Persons who were wielding guns, rifles, revolvers and pistols; and (ii) Respondent No. 5 was further abducted by the Accused Persons (the "FIR").
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> 4. The matter was investigated by the police and thereafter a charge-sheet was filed against the Accused Persons qua offences under Sections 147, 148, 149, 323 and 364

> of the IPC (the "Chargesheet"). Pursuant to the filing of the Chargesheet, Ld. Civil Judge, Junior Division, Tirwa, District, proceeded to take cognizance of the offences and inter alia issued process to the Accused Persons; and rejected objections filed by the Accused Persons vide order(s) dated (a) 29.11.1999; and (b) 18.04.2000 in Criminal Cases No. 1265 of 1999 and 1264 of 1999 (the "Summoning Order").
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> 5. Aggrieved, the Accused Persons preferred (i) a criminal revision petition assailing inter alia the Summoning Order (the "Revision Petition"); and (ii) an application under Section 482 CrPC seeking the quashing of the Chargesheet before the High Court (the "Quashing Petition"). Pertinently, vide an order dated 28.05.2010, the High Court dismissed both (i) the Revision Petition; and (ii) the Quashing Petition (the "1st HC Order").
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> 6. Thereafter, the Appellant preferred an application before the Chief Judicial Magistrate, Farrukhabad (the "Trial Court") for issuance of non-bailable warrants ("NBWs") against Accused Persons. Vide an order dated 17.01.2020, the Trial Court ordered the issuance of non-bailable warrants. On 28.09.2022, during the pendency of the trial before the Trial Court, the Accused Persons brought a settlement agreement dated 28.09.2022 executed inter alios the Accused Person(s) and Respondent No. 5 (the "Settlement Agreement") to the notice of the Trial Court.

Accordingly, an application was preferred by the Accused Persons under Section 482 CrPC before the High Court seeking quashing of the proceedings emanating from the FIR on the basis of the Settlement Agreement (the "1st Settlement Application"). However, vide an order dated 23.12.2022 in the 1st Settlement Application, the High Court directed the Trial Court to consider the Settlement Agreement; and pass appropriate order(s) within a period of 1 (one) month (the "2nd HC Order").

7. Pursuant to the 2nd HC Order, Trial Court considered the Settlement Agreement; and vide an order dated 23.01.2023, the Trial Court observed inter alia that (i) the Chargesheet has been filed under Sections 147, 148, 149, 323 and 364 of the IPC of which Section(s) 147, 148, 149, 364 are non-compoundable in nature; (ii) the FIR was lodged by the Appellant herein who was an injured person, yet wasn't made a party to the Settlement Agreement; and (iii) that the Appellant had filed an objection to the Settlement Agreement. Accordingly, in view of the aforesaid the Trial Court rejected the Settlement Agreement (the "Underlying Order").

8. Aggrieved by Underlying Order, another application was preferred by the Accused Persons before the High Court under Section 482 of the CrPC seeking the quashing of (i) the FIR; and

(ii) the proceeding(s) emanating from the FIR on the basis of the Settlement Agreement (the "2nd Settlement Application"). The High Court vide the Impugned Order allowed the 2nd Settlement Application. The operative paragraph(s) of the Impugned Order are reproduced as under:

> "On behalf of the applicant, this application is filed under Section 482 Cr.P.C. for quashing of Case No. 1288 of 2003, Case Crime No. 966 of 1999 under Section 364,

147, 148, 149, 323 I.P.C., Police Station Kotwali Farrukhabad: District Farrukhabad which is under consideration of court of Learned Chief Judicial Magistrate, Farrukhabad on the ground that the entire proceeding should be cancelled on the basis of the agreement dated 28- 09-2022 between the parties.

Learned Counsel for the applicants and opposite party No. 3 states that a settlement agreement has been reached between the parties on date 28-09-2022 in which it is mentioned that a First Information Report was lodged by the complainant against unknown people. The complainant has not taken the name of any accused in his statement under Section 161 and 164 Cr.P.C. It has also been mentioned in the said agreement that the mutual relations between the two parties have become quite cordial and there is no dispute of any kind left between them. The attested copy of the said agreement has been attached to this application as Annexure 4.

Learned counsel for the applicants and Mr. Md. Nadeem, learned counsel for opposite party number 3, have stated that they want disposal of the present case and do not want to pursue this issue further, hence the entire subsequent proceedings should be set aside. In support of his argument he cited the judgment of the Hon'ble Supreme Court in Narinder Singh & Ors. Vs. State of Punjab & Anr. 2014 Law Suit (SC) 202, Yogendra Yadav & Ors. Vs. State of Jharkhand & Anr., Dimpey Gujral W/o Vivek Gujral & Ors. Vs. Union Territory & Ors. and drawn the attention of the Court towards the said judgments.

Hearing the learned counsel for the parties and the learned Additional Government Advocate and examining the file and after considering the above precedents of the Hon'ble Supreme Court, this application submitted under Section 482 CrPC is eligible to be accepted.

Accordingly, this application is accepted and the entire proceedings of the above mentioned case are set aside."

9. The Learned Counsel appearing on behalf of the Appellant has submitted that the Appellant is an injured victim of the alleged offence; and also, is the original complainant in relation to the FIR. Accordingly, it has been vehemently contended before us that the High Court erred in law as well as in facts by allowing the 2nd Settlement Application. It was also submitted before us that the Impugned Order suffers from perversity and illegality on account of the fact that it fails to consider that the Appellant i.e., the original complainant, was neither a party to the Settlement Agreement nor was amenable to such a course of action. In this context, it was submitted that the High Court ought not to have exercised its jurisdiction under 482 CrPC in favour of the Accused Persons.

10. On the other hand, Learned Counsel appearing on behalf of Accused Persons has submitted that the Accused Persons entered into a settlement / compromise with Respondent No. 5 i.e., the principal victim who was allegedly abducted, and accordingly, once Respondent No. 5 had settled the matter, there was no justifiable cause to continue criminal proceedings against the Accused

Persons. Thus, it was submitted that the Impugned Order, was a well-reasoned order, that warrants no interference from this Court.

11. We have heard the counsel(s) appearing on behalf of the parties and perused the record. Admittedly and undisputedly, the Appellant herein is (i) an injured victim qua the alleged offence; and (ii) the original complainant qua the FIR. Furthermore, from the materials placed on record and the arguments advanced, it can safely be concluded that the Appellant neither entered into any settlement with the Accused Persons nor was courting any such idea. Accordingly, in view of the aforesaid circumstances, we fail to understand how the High Court proceeded to quash the FIR; and the proceedings emanating thereof in exercise of its jurisdiction under Section 482 CrPC. This Court in Gian Singh v. State of Punjab, (2012) 10 SCC 303 authoritatively laid down principles governing the exercise of jurisdiction under Section 482 CrPC by High Courts vis-à-vis quashing of an FIR, criminal proceeding or complaint. The same is reproduced as under:

> "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 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 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."

12. Thus, it is our considered opinion that the High Court has certainly erred by quashing (i) the FIR; and (ii) the criminal proceeding(s) emanating from the FIR on the basis of the Settlement Agreement. The High Court failed to notice that the Appellant i.e., an injured victim; and original complainant was not a party to the Settlement Agreement and nor was agreeable to such a course of action. Accordingly, we find that Impugned Order neither secured the ends of justice nor prevented an abuse of process of law, thus we find that the Impugned Order was erroneous and contrary to principles laid down in Gian Singh (Supra).

13. With the aforesaid observations, the appeal is accordingly allowed, and the Impugned Order is set aside. The proceedings emanating from FIR i.e., Case No. 1288 of 2003, stand restored to the file of the Trial Court, with a direction to the Trial Court to dispose of the same expeditiously, preferably, within a period of one year, in view of the fact that the FIR pertains to the year 1999.

14. Pending application(s), if any, are disposed of.

.....J. [VIKRAM NATH] .....J. [SATISH CHANDRA SHARMA] NEW DELHI MARCH 01, 2024