

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 03-03-2014

CORAM

HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

Crl.M.C. No.20 of 2013

Ms. Renuka Rai,
D/o Lt. Ratna Bahadur Rai,
R/o Upper Burtuk,
Swastik,
Gangtok, Sikkim. **... Petitioner**

versus

1. State of Sikkim
through Learned Public Prosecutor,
High Court of Sikkim.
2. Smt. Rupa Rai,
W/o Shri Dhan Bahadur,
R/o Upper Burtuk,
Swastik,
Gangtok, East Sikkim. **... Respondents**

For Petitioner : Mr. S. S. Hamal, Advocate with
Mr. Tashi Wongdi Bhutia,
Advocate.
Ms. Renuka Rai in person.

For Respondent No.1 : Mr. J. B. Pradhan, Public
Prosecutor with Mr. S. K. Chettri
and Mrs. Pollin Rai, Assistant
Public Prosecutors.

For Respondent No.2 : Mrs. Rupa Rai, in person.

O R D E R (ORAL)

Wangdi, J.

By this application the Petitioner seeks to
quash the criminal proceedings in General Register Case

No.60 of 2012 in the matter of ***State of Sikkim*** vs. ***Ms. Renuka Rai*** pending before the Court of the Judicial Magistrate, East Sikkim at Gangtok under Sections 451/380 of the Indian Penal Case (in short "IPC") arising out of the FIR No.87(08)2012 dated 07-08-2012 before the Sadar Police Station, Gangtok.

2. The substance of the facts giving rise to the criminal proceedings against the Petitioner is that she had unauthorisedly taken the ATM Debit card of the State Bank of India, Zero Point Branch belonging to the complainant from the complainant's house and had withdrawn various sums of money on different dates between 30-03-2013 and 08-05-2012 which in total amounted to Rs.56,000/-. The Complainant and the Petitioner are said to be neighbours having cordial relationship. The matter ultimately resulted in a charge-sheet being filed by the Sadar Police Station before the Court of the Judicial Magistrate, East Sikkim at Gangtok where the case is presently pending disposal. During the stage of investigation of the case, the parties had amicably settled the matter when the Petitioner also refunded the entire amount but, the offence being non-compoundable and a criminal case having been already

been registered, charge-sheet was submitted by the Investigating Agency giving rise to the General Register Case No.60 of 2012 as was noted earlier.

3. Mr. S. S. Hamal, Learned Advocate, appearing on behalf of the Petitioner, submits that considering the facts and circumstances in the present case and by application of the principle of *ex debito justitiae*, this is a fit case where this Court should exercise its power under Section 482 of the Code of Criminal Procedure, 1908 (in short Cr.P.C.) and quash the criminal proceedings. The circumstance is compelling as no purpose would be served in continuing with the criminal proceedings. In support of his submission Mr. Hamal referred to the case of ***Gian Singh vs. State of Punjab and Another : (2012) 10 SCC 303*** and submits that although a case under Section 380 IPC is made out against the Petitioner, it predominantly bears civil flavor and the offender and the complainant who is the victim have settled the dispute between them amicably. It is submitted that in the facts and circumstances, although the offence is not compoundable, this Court in exercise of its inherent power may quash the criminal proceedings.

4. Mr. J. B. Pradhan, Learned Additional Advocate General who is also the Public Prosecutor, appearing on behalf of the State-Respondent, concedes to the legal proposition laid down in ***Gian Singh (supra)*** and submits that discretion lies upon this Court as to whether it will exercise its inherent power under Section 482 Cr.P.C. in the facts and circumstances of the present case.

5. Upon giving thoughtful consideration to the submissions made on behalf of the parties and the facts and circumstances of the case, I am of the view that this is a fit case where powers under Section 482 Cr.P.C. may be exercised. In this proceeding, the Petitioner is not seeking compounding of the offences but to quash the General Register Case. The distinction between power of compounding and quashing of criminal proceedings have been most lucidly analysed in the case of ***Gian Singh (supra)*** where it has been held that these two powers “are incapable of being treated as synonymous or even interchangeable in law”. In other words, the two are distinct powers vested in the High Court. We may refer to some of the relevant portions of ***Gian Singh (supra)*** which are reproduced below: -

"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power.

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56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers Under Section 482. No precise and inflexible guidelines can also be provided.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable.

58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and 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.

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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 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. But the criminal cases having overwhelmingly and predominatingly 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 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 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

6. In an earlier decision of a Co-ordinate Bench of this Court in Crl.M.C. Case No.5 of 2013, in the matter of ***Miss Junna Limboo and Another vs. State of Sikkim and Another***, following these very principles power under Section 482 Cr.P.C. was exercised in quashing the FIR and entire proceedings of the General Register Case under consideration.

7. On the anvil of the above proposition when we consider the facts of the case at hand as revealed from the charge-sheet, it transpires that the Petitioner appears to have committed the offence of unauthorisedly withdrawing various sums of money in order to meet the expenses of her professional training in hotel management which as she was unable to obtain from her family due to their poor condition. The charge-sheet itself records that the parties had settled the matter through a deed of compromise and the Petitioner had returned the money to the complainant. From its tenor, it can be gathered that the charge-sheet against the Petitioner was filed only on account of the nature of the offences being non-compoundable. It is also noted that the Petitioner and the complainant impleaded as Respondent No.2, who are both present in Court, appear

to be maintaining a cordial relationship. Apart from this, we also find that no serious objections are being raised on behalf of the Respondent-State to the application. Under these circumstances, continuation of criminal proceedings, in my view, would be an exercise in futility.

8. For all these reasons, I have no hesitation to hold that the application deserves to be allowed to secure the ends of justice and, is accordingly allowed.

9. As a consequence, FIR No.87(08)2012 filed in the Sadar Police Station, Gangtok dated 07-08-2012 and the consequential proceedings in General Register Case No.60 of 2012 pending in the Court of the Judicial Magistrate, East Sikkim at Gangtok, stands hereby quashed

10. Let a copy of this Order be transmitted forthwith to the Court of the Judicial Magistrate, East Sikkim at Gangtok for its due compliance.

Sd/-
(S. P. Wangdi)
Judge
03-03-2014