



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CrMMO No. 321 of 2019
Decided on: June 20, 2019

Daljit Singh and anotherPetitioners

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting¹? Yes.

For the petitioners: Mr. Dheeraj K. Vashisht, Advocate.

For the respondent: Mr. Sanjeev Sood and Mr. Ashwani
Sharma, Additional Advocates General
with Mr. Sunny Dhatwalia, Assistant
Advocate General.

Sandeep Sharma, J. (Oral)

By way of present petition filed under S.482 CrPC, prayer has been made on behalf of the petitioners, who happen to be husband-wife, for quashing of FIR No. 11, dated 6.8.2018, under Ss. 376 and 506 IPC, registered at Women Police Station, Una, Himachal Pradesh as well as consequential proceedings pending in the court of learned Additional Sessions Judge-II, Una, Himachal Pradesh.

2. FIR in question came to be lodged at the behest of petitioner No.2, Shivani Chauhan on 6.8.2018, who alleged that

Whether reporters of the Local papers are allowed to see the judgment? .

on 9.3.2018, petitioner No.1 allured her on the pretext of marriage and subsequently on 14.3.2018 solemnised marriage with her at Chandigarh in a Temple. It also emerges from the FIR that after solemnizing marriage, petitioners filed a joint petition before Punjab and Haryana High Court, for protection. Punjab and Haryana High Court disposed of the petition with a direction to the SSP, Hoshiarpur to ensure safety of lives and liberty of the petitioners.

3. FIR lodged at the behest of petitioner No.2, further reveals that she kept on living with petitioner No.1 in her matrimonial house at Mukerian but since petitioner No.2 went abroad on 4.4.2018 and certain differences cropped up between the petitioners, petitioner No.2 lodged the FIR in question, alleging therein that she was compelled/forced to solemnise marriage, against her wishes, by petitioner No.1, who after solemnization of marriage, repeatedly sexually assaulted her against her wishes. Averments contained in the petition as well as documents annexed therewith reveal that with the intervention of the elders of the family, both the petitioners have now resolved to settle their dispute amicably *inter se* them and as such, petitioner No.2, who is complainant, does not wish to continue with the proceedings initiated at her behest. Though

perusal of compromise, Annexure P-3, reveals that both the petitioners have been residing with each other as husband-wife at Village Nangal Bihala, Tehsil Mukerian, Punjab, i.e. matrimonial house of petitioner No.2, happily, but this court solely with a view to ascertain the genuineness and correctness of the compromise placed on record caused presence of petitioner No.2 in the court, who has come present alongwith petitioner No.1 and her father, Shri Ajay Kumar. Petitioner No. 2 on oath stated before this Court that she, of her own volition, without there being any external pressure, has entered into compromise. She further stated that the FIR in question came to be lodged at her behest on account of some misunderstanding, as such, she, in terms of agreement arrived *inter se* parties, intends to withdraw the FIR. Petitioner No.2 further stated that she shall have no objection in case FIR No. 11 dated 6.8.2018 as well as consequential proceedings pending before learned Court below are ordered to be quashed and set aside. Her statement is taken on record.

4. Mr. Ashwani Sharma, learned Additional Advocate General, having heard statement of the petitioner No.2 fairly stated that in view of amicable settlement arrived *inter se* parties,

no fruitful purpose will be served in case FIR lodged at the behest of petitioner No.2 is allowed to sustain.

5. Having heard learned counsel for the parties and perused the material available on record, especially the contents of the FIR, this Court has no hesitation to conclude that both the petitioners prior to lodging of FIR in question had solemnized marriage and thereafter apprehending threat to their life had approached Punjab and Haryana High Court by way of a joint petition, seeking protection.

6. Close scrutiny of FIR itself reveals that petitioner No.2, who happened to be complainant, after solemnization of marriage with petitioner No.1, resided at her matrimonial house for quite considerable time with her husband and when petitioner No.1 went abroad, petitioner No.2 apprehended that he would not come back, as such, lodged the FIR. Even averments contained in the compromise (Annexure P-3) which have been further substantiated by petitioner No.2, while making statement on oath before this court, clearly reveal that the parties have settled their dispute amicably and it appears that they are living happily as husband-wife.

7. The question which now needs consideration is whether FIR lodged under S.376 IPC can be ordered to be

quashed when Hon'ble Apex Court in **Narinder Singh and others** versus **State of Punjab and another** (2014)6 SCC 466 has specifically held that power under S. 482 CrPC is not to be exercised in the cases 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.

8. At this stage, it would be relevant take note of the judgment passed by Hon'ble Apex Court in **Narinder Singh** (supra), whereby the Hon'ble Apex Court has formulated guidelines for accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Perusal of judgment referred to above clearly depicts that in para 29.1, Hon'ble Apex Court has returned the findings that power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash criminal proceedings even in those cases which are not compoundable and where the parties have settled the matter between themselves, however, this power is to be exercised sparingly and with great caution. Para Nos. 29 to 29.7 of the judgment are reproduced as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

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 under Section 482 Cr.P.C 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 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.

29.4. On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the

evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime”.

9. Careful perusal of para 29.3 of the judgment suggests that such a power is not to be exercised in the cases 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. Apart from this, offences 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. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly arising out of commercial transactions or arising out of matrimonial relationship or family disputes may be quashed when the parties have resolved their entire disputes among themselves.

10. In the case at hand, the dispute is more of a family dispute, which is between husband and wife, due to some misunderstanding. Petitioner No. 2 (wife) being under the apprehension that her husband, petitioner No.1, who had gone abroad in connection with work, would not come back, lodged FIR in question against petitioner No. 1. Otherwise there appears to be no offence committed by petitioner No. 1 against petitioner No. 2, who is his wife and as such, neither the offence in question is of mental depravity nor against the society.

11. The Hon'ble Apex Court in case **Gian Singh v. State of Punjab and anr.** (2012) 10 SCC 303 has held that power of the High Court in quashing of the criminal proceedings or FIR or complaint in exercise of its inherent power is distinct and different from the power of a Criminal Court for compounding offences under Section 320 Cr.PC. Even in the judgment passed in **Narinder Singh's** case, the Hon'ble Apex Court has held that while exercising inherent power of quashment under Section 482 Cr.PC the Court must have due regard to the nature and gravity of the crime and its social impact and it cautioned the Courts not to exercise the power for quashing proceedings in heinous and serious offences of mental depravity, murder, rape, dacoity etc. However subsequently, the Hon'ble Apex Court in **Dimpey Gujral**

and Ors. vs. Union Territory through Administrator, UT, Chandigarh and Ors. (2013) 11 SCC 497 has also held as under:-

“7. In certain decisions of this Court in view of the settlement arrived at by the parties, this Court quashed the FIRs though some of the offences were non-compoundable. A two Judges’ Bench of this court doubted the correctness of those decisions. Learned Judges felt that in those decisions, this court had permitted compounding of non-compoundable offences. The said issue was, therefore, referred to a larger bench.

The larger Bench in *Gian Singh v. State of Punjab* (2012) 10 SCC 303 considered the relevant provisions of the Code and the judgments of this court and concluded as under: (SCC pp. 342-43, para 61)

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 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.” (emphasis supplied)

8. In the light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26.10.2006 registered under Section 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising there from including the final report presented under Section 173 of the Code and charges framed by the trial Court are hereby quashed.”

12. Recently the Hon’ble Apex Court in its latest judgment dated 4th October, 2017, titled as **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others** versus **State of Gujarat and Another**, passed in Criminal Appeal No.1723 of 2017 arising out of SLP(Crl) No.9549 of 2016, reiterated the principles/ parameters laid down in **Narinder Singh’s** case supra for accepting the settlement and quashing the proceedings. It

would be profitable to reproduce para No. 13 to 15 of the judgment herein:

“13. The same principle was followed in *Central Bureau of Investigation v. Maninder Singh* (2016)1 SCC 389 by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

“...In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.”

14. In a subsequent decision in *State of Tamil Nadu v R Vasanthi Stanley* (2016) 1 SCC 376, the court rejected the submission that the first respondent was a woman “who was following the command of her husband” and had signed certain documents without being aware of the nature of the fraud which was being perpetrated on the bank. Rejecting the submission, this Court held that:

“... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon the gender of an accused. True it is, there are certain provisions in Code of Criminal Procedure relating to exercise of jurisdiction Under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score...”

“...A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system...”

15. The broad principles which emerge from the precedents on the subject may be summarized in the following propositions:

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant

element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

13. Though, in the case at hand, FIR stands registered against petitioner No.1 under Ss. 376 and 506 IPC but, as has been noticed herein above, petitioner No.2-complainant is legally wedded wife of petitioner No.1 and FIR in question came to be lodged on account of misunderstanding /mis-apprehension, as such, in very strict terms, it cannot be said that offence, if any, under S.376 IPC ever came to be committed by petitioner No.1. Since petitioners are happily married and they have decided to resolve their dispute amicably, no fruitful purpose would be served in case proceedings initiated at the behest of the petitioner No.2 are allowed to continue. Moreover, the complainant has compromised the matter and she is no longer interested in carrying on with the criminal proceedings against the accused.

Otherwise also, possibility of conviction in the case is bleak and remote, since complainant herself is not interested in carrying on with the criminal proceedings initiated at her behest.

14. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), FIR No. 11, dated 6.8.2018, under Ss. 376 and 506 IPC registered at Women Police Station, Una, Himachal Pradesh as well as consequential proceedings pending in the court of learned Additional Sessions Judge-II, Una, Himachal Pradesh are quashed and set aside. Petitioner No.1, is acquitted of the offences levelled against him in the aforesaid FIR.

15. The petition stands disposed of in the aforesaid terms, alongwith all pending applications.

**(Sandeep Sharma)
Judge**

June 20, 2019
(Vikrant)