

(2020) 02 MP CK 0178

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 49375 Of 2019

Ajay @ Ajju Soni

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 307, 436, 294

Citation : (2020) 02 MP CK 0178

Hon'ble Judges : Rajeev Kumar Dubey, J

Bench : Single Bench

Advocate : M.K. Mishra, Rakesh Singh, Satish Kumar Singarha

Final Decision : Disposed Of

Judgement

It appears from the record that this Court vide orders dated 28/11/2019 & 27/01/2020 directed the Registrar (J-II) to verify the factum of compromise

and the Registrar (J-II) in its reports dated 09/12/2019 & 27/01/2020 has stated that the applicant Ajay @ Ajju Soni, complainant/respondent No.2

Ishtiaq Ahmed and the owner of the building Smt. Kusum Goswami have amicably settled their dispute.

This petition has been filed under Section 482 of Cr.P.C. for quashing the F.I.R. registered at Crime No.178/2018 at Police Station Kotwali District

Chhatarpur for the offences punishable under Sections 436 and 294 of IPC and consequential proceedings arising out from the said crime.

As per the prosecution story, on 13.04.2018 complainant Ishtiaq Ahmed lodged a report at police station Chhatarpur averring that he is residing at Smt.

Kusum Goswami's house on rent located at Chhatarpur and he also took one godown located in the house of Smt. Kusum Goswami on rent. In that

godown khas of Rs.6 lakh was stored by him. On 13.04.2018 at 10:30 PM when he was working at his house along with Aneesh, Saffique, Riyashat

and Jaid, applicant Ajay @ Ajju Soni came there and abused him and he threw a piece of a burning cigarette in his warehouse. Due to which a fire

broke out in the Khas kept in the warehouse and it was destroyed by burning with fire and the warehouse was also damaged due to burning. Thus,

complainant Ishtiaq Ahmed suffered a loss of Rs.6 lakh. Smt. Kusum Goswami, also being the owner of the building/godown, suffered loss, as the

building/godown also got damaged. On that report police, registered crime No.178/2018 for the offence punishable under Sections 436 and 294 of IPC

and investigated the matter. After investigation, Police filed a charge-sheet. On that charge-sheet Sessions trial case was registered.

Learned counsel for the applicant submits that complainant/respondent No.2 Ishtiaq Ahmed and also person aggrieved Smt. Kusum Goswami have

entered into a compromise with the applicant, hence the F.I.R. registered at crime No.178/2018 at Police Station Kotwali District Chhatarpur for the

offences punishable under Sections 436 and 294 of IPC and consequential proceedings arising out from the said crime be set aside on the basis of compromise.

It is true that Sections 294 and 436 of the IPC involved in the case are non-compoundable offence. However, the Apex Court in the case of G. I. Singh V/s. State of Punjab and another reported in (2012) 10 SCC 303, in which

Apex Court held that, "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 Cr.P.C. Cases where power to quash criminal proceedings may be exercised where the parties have

settled their dispute, held, depends on facts and circumstances of each case. Before exercise of inherent quashment power under Section 482, High

Court must have due regard to nature and gravity of the crime and its societal impact. Offences arising from commercial, financial, mercantile, civil,

partnership or like transactions or offences arising out of matrimony relating to dowry etc. or family disputes where the wrong is basically private or

personal in nature and parties have resolved their entire dispute, High Court may quash criminal proceedings.â??

The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in Narinder Singh & others V/s. State of Punjab & others reported in

(2014) 6 SCC 466, the pertinent observations of the Apex Court in Narinder Singh (Supra) are as under:-

â??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:

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.

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.

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.

On the other hand, those criminal cases having overwhelmingly and predominantly 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.

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.

Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are 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 latter 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.

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 to 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.

In this case, also it appears that dispute between the applicant Ajay and complainant/respondent No.2 Ishtiaq Ahmed and also the person aggrieved

Smt. Kusum Goswami has been amicably settled. So, in the light of aforesaid Apex Court's judgments, this Court is of the considered view that no

useful purpose is going to be served by keeping the matter pending.

Resultantly, the FIR registered at Crime No.178/2018 at Police Station Kotwali, District Chhatarpur for the offences under Sections 294 and 436 of

the IPC and consequential proceedings arising out from the said crime on the basis of compromise are hereby quashed.

Accordingly, the present petition stands disposed of.