

(2016) 10 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 246 of 2016

Anant Kumar Jain

APPELLANT

Vs

Nidhi Jain

RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, Section 498A

Citation : (2017) 169 AIC 494

Hon'ble Judges : Mr. Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. Vaibhav Tanwar, Advocate, for the Petitioner; Ms. Meenakshi Sharma, Additional Advocate General and Mr. J.S. Guleria, Assistant Advocate General, for the Respondent No. 2; Mr. Desh Raj Thakur, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.(Oral) - This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of Criminal Case No.4/2 of 2011, registered under Sections 498-A and 406 of IPC, titled "Nidhi Jain versus Anant Kumar Jain", pending in the Court of learned Additional Chief Judicial Magistrate, Court No.1, Paonta Sahib, along with all consequential proceedings including charges framed by the learned ACJM, Court No.1, Paonta Sahib, District Sirmaur, H.P.

2. The facts, in brief, are that marriage between petitioner and respondent No.1 was solemnized on 19.10.2008 at Paonta Sahib according to Hindu rites and rituals. After sometime, the relationship between petitioner and respondent No.1 turned sour and both of them entered into litigation against each other.

3. Today, petitioner and respondent No.1 are present in the Court and identified as such by their respective counsel(s). It is averred by the learned counsel for the parties that the petitioner and respondent No.1 have now entered into a

compromise and statements of the parties as Annexures P-14 and P-15 and copy of order dated 04.06.2016 (Annexure P-16) passed by the learned Additional Sessions Judge, Sirmaur District at Nahan, thereby dissolving the marriage between the parties, have been placed on the case file to this effect. It is stated by respondent No.1 that in view of the compromise now she does not want to pursue this case against the petitioner.

4. The moot question is whether the Court in such like cases can quash the proceedings. The law on this subject has been summed up in a recent judgment of the Hon'ble Supreme Court in *Narinder Singh & Ors. v. State of Punjab & Anr.* JT 2014 (4) SC 573, wherein it was held as under:

"(I) 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.

(II) 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.

(III) 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.

(IV) On the other, 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.

(V) 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.

(VI) 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.

(VII) 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."

5. It would be seen that prior to Narinder Singh's case (supra), a three Hon'ble Judges Bench had considered the relevant scope of Sections 482 and 320 Cr.P.C. in Gian Singh v. State of Punjab and another (2012) 10 SCC 303 wherein it was 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.P.C. While exercising inherent power of quashment under Section 482 Cr.P.C., the Court must have due regard to the nature and gravity of the crime and its social impact. It warned the Courts, the High Court for quashing proceedings in heinous and serious offences of mental depravity, murder, rape, dacoity etc. which principles have been reported and reaffirmed in Narinder Singh's case (supra).

6. Now the further question remains whether this Court can quash the proceedings where petitioner has been charged under Sections 498-A and 406 of IPC.

7. This question need not detain this Court any longer in view of the judgment of the Hon'ble Supreme Court in *Dimpey Gujral, W/o Vivek Gujral and others v. Union Territory through Administrator, UT, Chandigarh and others* (2013) 11 SCC 497 where the Hon'ble Supreme Court was dealing with a case regarding quashing of FIR and its consequential proceedings involving Sections 147, 148, 149, 323, 307, 452, 506 IPC and after relying upon the judgment of *Gian Singh's case* (supra) held as follows:-

"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 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, the 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."

8. Similar issue came up recently for consideration before the Hon"ble Supreme Court in *J. Ramesh Kamath and others v. Mohana Kurup and others* AIR 2016 SC 2452, wherein it was held as under:-

"11. The first contention advanced at the hands of the learned counsel for the appellants was, that the respondents-accused have been charged of offences under Sections 406, 408, 409, 477A and 120B of the Indian Penal Code. It was the pointed contention of the learned counsel for the appellants, that most of the provisions under which the accused-respondents had been charged, were non-compoundable under Section 320 of the Criminal Procedure Code. And as such, the matter could not have been compounded.

12. Whilst it is not disputed at the hands of the learned counsel for respondent nos. 1 and 2, that most of the offences under which the accused were charged are non-compoundable, yet it was asserted, that the jurisdiction invoked by the High Court in quashing the criminal proceedings against respondent nos. 1 to 3, was not under Section 320 of the Criminal Procedure Code, but was under Section 482 of the Criminal Procedure Code, as interpreted by this Court.

13. Insofar as the decisions of this Court are concerned, reference, in the first instance, was made to *Madan Mohan Abbot v. State of Punjab*, (2008) 4 SCC 582: (AIR 2008 SC 1969), wherefrom, our attention was invited to the following observations:

"5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has on 11-1-2004, passed away and the possibility of a conviction being recorded has thus to be ruled out.

6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."

(Emphasis is ours)

A perusal of the conclusions extracted above, with a reading of the FIR and the supporting documents in the above case reveal, that the dispute was purely of a personal nature, between two contesting parties. Further that, the dispute arose out of private business dealings between two private parties. And furthermore, there was absolutely no public involvement, in the allegations made against the accused. Based on the aforesaid considerations, this Court had held, that in disputes where the question involved was of a purely personal nature, it was appropriate for Courts to accept the terms of compromise, even in criminal proceedings. It was sought to be explained, that in such matters, keeping the matters alive would not result, in favour of the prosecution. We are of the view, that the reliance on the above judgment would have been justified, if the inferences drawn by the High Court were correct, namely, that admittedly there was no misappropriation of the funds of the Association, and secondly, the

offences alleged were purely personal in nature. We shall examine that, at a later stage.

14. Having placed reliance on the judgment in the Madan Mohan Abbot case (supra), which was determined by a two-Judge Division Bench of this Court, learned counsel for respondent Nos. 1 to 3 went on to place reliance on Gian Singh v. State of Punjab (2012) 10 SCC 303 : (AIR 2012 SC (Supp) 838, para 55, 56, 57), which was decided by a three-Judge Division Bench. Insofar as the instant judgment is concerned, learned counsel for respondent Nos. 1 to 3, in the first instance, invited this Court's attention to paragraph 37 thereof, wherein the earlier decision rendered by this Court in the Madan Mohan Abbot case, was duly noticed. Thereupon, the Bench recorded its conclusion as under:

"59. B.S. Joshi (2003) 4 SCC 675 : (AIR 2003 SC 1386), Nikhil Merchant (2008) 9 SCC 677 : (AIR 2009 SC 428), Manoj Sharma (2008) 16 SCC 1: (AIR 2008 SC (Supp) 1171) and Shiji (2011) 10 SCC 705: (AIR 2012 SC 409) do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.

60. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia (1990) 2 SCC 437: (AIR 1990 SC 1605), Dharampal (1993) 1 SCC 435 : (AIR 1993 SC 1361), Arun Shankar Shukla (1999) 6 SCC 146: (AIR 1999 SC 2554), Ishwar Singh (2008) 15 SCC 667: (AIR 2009 SC 675), Rumi Dhar (2009) 6 SCC 364 : (AIR 2009 SC 2195) and Ashok Sadarangani (2012) 11 SCC 321 : (AIR 2012 SC 1563). The principle propounded in Simrikhia that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla. In Ishwaqr Singh the accused was alleged to have committed an offence punishable under Section 307 IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for the commission of the offences under Sections 120- B/420/467/468/471 IPC

along with the bank officers who were being prosecuted under Section 13(2) read with 13 (1)(d) of the Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani was again a case where the accused persons were charged of having committed the offences under Sections 120-B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collateral's and utilised such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S.Joshi, Nikhil Merchant and Manoj Sharma and it was held that B.S.Joshi, and Nikhil Merchant dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

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 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 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 pre-dominantly 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 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."

(Emphasis is ours)

15. A perusal of the above determination, leaves no room for any doubt, that this Court crystalised the position in respect of the powers vested in the High Court under Section 482 of the Criminal Procedure Code, to quash criminal proceedings. It has now been decisively held, that the power vested in the High Court under Section 482 of the Criminal Procedure Code, is not limited to quashing proceedings within the ambit and scope of Section 320 of the Criminal Procedure Code. The three-Judge Division Bench in the above case, clearly expounded, that quashing of criminal proceedings under Section 482 of the Criminal Procedure Code, could also be based on settlements between private parties, and could also on a compromise between the offender and the victim. Only that, the above power did not extend to crimes against the society. It is also relevant to mention, that the jurisdiction vested in the High Court under Section 482 of the Criminal Procedure Code, for quashing criminal proceedings, was held to be exercisable in criminal cases having an overwhelming and pre-dominantly civil flavour, particularly offences arising from commercial, financial, mercantile, civil, partnership, or such like transactions. Or even offences arising out of matrimony relating to dowry etc. Or family disputes where the wrong is basically private or personal. In all such cases, the parties should have resolved their entire dispute by themselves, mutually.

16. The question which emerges for our consideration is, whether the allegations levelled in the complaint against respondent Nos. 1 to 3, would fall within the purview of the High Court, so as to enable it to quash the same, in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code?"

9. In view of the aforesaid exposition of law, there can be no gainsaying that the jurisdiction vested with this Court under Section 482 of the Criminal Procedure Code for quashing criminal proceedings is exercisable relating to offences arising out of matrimonial dispute like dowry etc. This Court, therefore, is of the opinion that this is a case where the continuation of the criminal proceedings would tantamount to abuse of process of law because the alleged offences are not

heinous offences showing extreme depravity nor are they strictly against the society. These are offences of personal nature and quashing the proceedings would bring about peace and amity between two sides.

10. In these circumstances, Criminal Case No.4/2 of 2011, registered under Sections 498-A and 406 of IPC, titled "Nidhi Jain v. Anant Kumar Jain", pending in the Court of learned Additional Chief Judicial Magistrate, Court No. 1, Paonta Sahib, along with all consequential proceedings including charges framed by the learned ACJM, Court No.1, Paonta Sahib, District Sirmaur, H.P. against the petitioner, are quashed.

11. The petition is allowed in the aforesaid terms. Pending application, if any, also stands disposed of.