

(2018) 03 MP CK 0147
In the Madhya Pradesh High Court
Case No : MCRC 10106 OF 2018

Anil Kumar And Another	Vs	APPELLANT
State Of Mp And Another		RESPONDENT

Date of Decision : 26-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code 1860 — Section 120B, 420, 467, 468, 471

Citation : (2018) 03 MP CK 0147

Hon'ble Judges : G.S. AHLUWALIA, J

Bench : Single Bench

Advocate : Atul Gupta, Arun Sharma, Dilip Singh Tomar, Harikrishan Singh Chauhan

Final Decision : Dismissed

Judgement

This application under Section 482 of CrPC has been filed for quashing the proceedings in Sessions Trial No.59/2017 pending in the Court of Second

Additional Sessions Judge, Morena for the offence under Sections 420, 467, 468, 471, 120-B of IPC.

(2) It is submitted by the counsel for the applicants that the parties have compromised the matter and, therefore, they had filed an application under

Section 320 of CrPC, which has been rejected by order dated 21/02/2018. It is submitted that in the light of the judgments passed by the Supreme

Court in the cases of Gian Singh vs. State of Punjab reported in (2012) 10 SCC 303 and Narinder Singh & Ors. vs. State of Punjab & Anr. reported in

(2014) 6 SCC 466, the proceeding can be quashed on the basis of compromise.

(3) If the FIR which has been lodged against the present applicants is considered, then it is clear that the applicants are the employees of the Bank

and it is alleged that on the basis of forged documents, they had sanctioned loan of Rs.60,000/-in favour of co-accused persons. It is well known that

the Bank, sanction the loan only after duly verifying the documents. Thus, it cannot be said that the documents which were made available by the co-

accused persons, were relied upon by the Bank without getting it verified.

(4) It is submitted by the counsel for the applicants that the applicants have nothing to do with the present matter because the Bank had acted upon the

documents which were made available by the co-accused persons and the applicants were not knowing that the documents, which were produced by

the co-accused persons, were forged. The submissions made by the counsel for the applicants cannot be accepted because before sanctioning the

loans, the documents are always verified by the Bank.

(5) The Supreme Court in the cases of Gian Singh and Narinder Singh (supra) has held that subject to the gravity of the offence, the proceedings

can be quashed on the basis of compromise, but in the present case, if the allegations made against the present applicants are taken into consideration,

then it appears that they are serious in nature and are not private in nature and have serious impact on the society. ¹³

(6) The Supreme Court in the case of Gopakumar B.Nair vs C.B.I & Anr, reported in (2014)5 SCC 800 has held as under :-

¹³ "13. The decision in Gian Singh (supra) holding the decision rendered in Nikhil Merchant (supra) and other cases to be correct is only an approval

of the principle of law enunciated in the said decisions i.e. that a non-compoundable offence can also be quashed under Section 482CrPC on the

ground of a settlement between the offender and the victim. It is not an affirmation, for there can be none, that the facts in Nikhil Merchant (supra)

justified/called for the due application of the aforesaid principle of law. Also, neither Nikhil Merchant (supra) nor Gian Singh (supra) can be

understood to mean that in a case where charges are framed for commission of non-compoundable offences or for criminal conspiracy to commit

offences under the PC Act, if the disputes between the parties are settled by payment of the amounts due, the criminal proceedings should invariably

be quashed. What really follows from the decision in Gian Singh (supra) is that though quashing a non-compoundable offence under Section 482CrPC,

following a settlement between the parties, would not amount to circumvention

of the provisions of Section 320 of the Code the exercise of the power under Section 482 will always depend on the facts of each case. Furthermore, in the exercise of such power, the note of caution sounded in *Gian Singh* (supra) (para 61) must be kept in mind. This, in our view, is the correct ratio of the decision in *Gian Singh* (supra).

14. The aforesaid principle of law may now be applied to the facts of the present case. At the very outset a detailed narration of the charges against

the accused-appellant has been made. The appellant has been charged with the offence of criminal conspiracy to commit the offence under Section

13(1)(d). He is also substantively charged under Section 420 (compoundable with the leave of the Court) and Section 471 (noncompoundable). A

careful consideration of the facts of the case would indicate that unlike in *Nikhil Merchant* (supra) no conclusion can be reached that the substratum

of the charges against the accused-appellant in the present case is one of cheating nor are the facts similar to those in *Narendra Lal Jain* (supra)

where the accused was charged under Section 120-Bread with Section 420 IPC only. The offences are certainly more serious; they are not private in

nature. The charge of conspiracy is to commit offences under the Prevention of Corruption Act. The accused has also been charged for commission

of the substantive offence under Section 471 IPC. Though the amounts due have been paid the same is under a private settlement between the parties

unlike in *Nikhil Merchant* (supra) and *Narendra Lal Jain* (supra) where the compromise was a part of the decree of the Court. There is no

acknowledgment on the part of the bank of the exoneration of the criminal liability of the accused-appellant unlike the terms of compromise decree in

the aforesaid two cases. In the totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in *Gian Singh* (supra)

(para 61) applies to the present case and on that basis had come to the conclusion that the power under Section 482 CrPC should not be exercised to

quash the criminal case against the accused, we cannot find any justification to interfere with the said decision. The appeal filed by the accused is,

therefore, dismissed and the order dated 25.06.2013 of the High Court, is affirmed."

The Supreme Court in the case of *C.B.I vs Jagjit Singh* reported in (2013) 10 SCC 686 has held as under :-

14. In the present case, the specific allegation made against the respondent-accused is that he obtained the loan on the basis of forged document with the aid of officers of the Bank. On investigation, having found the ingredients of cheating and dishonestly inducing delivery of property of the bank (Section 420IPC) and dishonestly using as genuine a forged document (Section 471IPC), charge sheet was submitted under Sections 420/471IPC against the accused persons.

15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with Banking activities including offences under Sections 420/471IPC have harmful effect on the public and threaten the well being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank as the victim in such cases but, in fact, the society in general, including customers of the Bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any Court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice."

The Supreme Court in the case of CBI vs. Maninder Singh, reported in (2016) 1 SCC 389 has held as under:-

"16. The allegation against the respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

17. The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there

would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. 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 a 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.

18. In recent decision in Vikram Anantrai Doshi(supra), this Court distinguished Nikhil Merchant's case and Narendra Lal Jain's case where

the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various

case laws under subject in Vikram Anantrai Doshi's case, this Court observed that cheating by bank expositis fiscal impurity and such financial

fraud is an offence against society at large in para (23), this Court held as under (State of Maharashtra vs. Vikram Anantrai Doshi (2014) 15 SCC 29

SCC Page 42):-

“Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal

impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or

personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is

manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and

predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the

offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious

consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong.

It has the potentiality to usher in economic crisis. Its implications have its own

seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceedings on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible.

The Supreme Court in the case of Ramesh Kamath and Others vs. Mohana Kurup and Others, reported in (2016)12 SCC 179 has held as under:-

"17. In the above view of the matter, we are satisfied that the allegations levelled against respondent nos.1 to 3 were of a nature, which could not be treated as purely of a personal nature. We are also astonished, that the complainants, who are arrayed in the present appeal as respondent nos.4 to 7 affirmed (in the compounding petition) that "no misappropriation of the

amounts of All Kerala Chemists and Druggists Association is committed by the petitioners/accused personsâ?. We are also amazed, that respondent nos.8 and 9 herein, who were the General Secretary and the Treasurer respectively of the Association, at the time of filing of the compounding petition, confirmed the stand adopted by the complainants, in the compounding petition. The accusations levelled against respondent nos.1 to 3, in our considered view, do not pertain to a dispute which can be described as purely of a personal nature. It is also not possible for us to acknowledge the position adopted by the complainants, and the then members of the Association, that no misappropriation had been committed by the accused. We cannot appreciate how such a statement could have been made after the investigation had been completed, and charges were framed, which were pending trial before a court of competent jurisdiction.

18. We are of the view, that the basis on which the impugned order was passed, was incorrectly determined as of a personal nature. Additionally, the accusations were not of a nature which can be classified by this Court, as were amenable to be quashed, under Section 482 of the Criminal Procedure Code.

19. To be fair to the learned counsel for respondent Nos. 1 to 3, we may also refer to *Narinder Singh vs. State of Punjab*, (2014) 6 SCC 466, wherein one of the offences for which the accused was proceeded against was under Section 307 of the Indian Penal Code. It was submitted, that even for such criminal offences, a Court of competent jurisdiction, under Section 482 of the Criminal Procedure Code, could quash the criminal proceedings.

Reference in this behalf was made to the conclusions drawn by this Court in paragraphs 29.6 and 29.7, which are extracted hereunder:-

â??29.6 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.

Â 29.7 While deciding whether to exercise its power under 482Â 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 chargesheet 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 307IPC 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 307IPC 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.â?? (emphasis is ours)

20. It is not possible for us to accept the submissions advanced at the hands of the learned counsel for respondent nos.1 to 3, on the basis of the

observations extracted hereinabove. In the above judgment, this Court was of the view, that it would be open to the High Court to examine, as to

whether there was material to substantiate the charge under Section 307 of the Indian Penal Code, and also, to determine whether the prosecution had

collected sufficient evidence to substantiate the said charge. And in case sufficient evidence to sustain the charges did not emerge, it would be open to

the High Court to quash the proceedings. We are of the view, that the instant judgment had no relevance, to the facts and circumstances of this case.

Herein, the investigation has been completed, and the final report was filed before the Chief Judicial Magistrate, Ernakulam, on 22.03.2009. More than

6 years have gone by since then. It is not the case of the accused, that the final report does not contain adequate material to substantiate the charges.

J.Ramesh Kamath, appellant no.1 herein, has been cited as charge witness no.5; Giri Nair- appellant No.2 herein, has been cited as charge witness

no.6; and Antony Tharian â?" appellant no.3 herein, has been cited as charge witness no.18. It is their contention, that the charges are clearly made

out on the basis of documentary evidence. We would say no more. But that, the inferences are those of the appellants, and not ours. The eventual

outcome would emerge from the evidence produced before the trial court."

(7) Considering the allegations which have been made against the applicants, this Court of the considered opinion that it is not a fit case where the

prosecution of the applicants can be quashed on the ground of compromise.

(8) Accordingly, the application fails and is hereby dismissed.