

(2018) 06 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Cr. MMOs No. 179 & 180 of 2018

Anurag Ailawadi and others

APPELLANT

Vs

State of H.P. and another

RESPONDENT

Date of Decision : 01-06-2018

Acts Referred:

Code of Criminal Procedure 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 147, 149, 279, 323, 341, 337, 356
Constitution of India, 1950 — Article 142, 226

Citation : (2018) 06 SHI CK 0003

Hon'ble Judges : CHANDER BHUSAN BAROWALIA

Bench : Single Bench

**Advocate : Vipul Sharda, Ashwani Sharma, P.K. Bhatti, Rajat??Chauhan,
Raman??Jamalta**

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J.

1.The present petitions, under Section 482 of the Code of Criminal Procedure (hereinafter to be called as "the Code") are maintained by the

petitioners for quashing of F.I.R. No. 188 of 2016, dated 30.07.2016, under Sections 279 & 337 of the Indian Penal Code, registered at Police Station

Sadar-Hamirpur, District Hamirpur, H.P. and F.I.R No. 197 of 2016, dated 06.08.2016, under Sections 341, 323, 356, 147 & 149 of the Indian Penal

code and alongwith all consequent proceedings arising out of the said F.I.R.

2. Briefly stating the facts, giving rise to the present petitions are that on 30.07.2016, at about 12.45 a.m. (morning), the petitioners (in both the

petitions) met with an accident and a scuffle also took place between them. As per the petitioners (in Cr. MMO No. 179 of 2018), the accident took

place due to the rash and negligent driving of Devashish Thakur (petitioner in Cr. MMO No. 180 of 2018). However, as per Devashish Thakur the accident has occurred, as suddenly an animal had come in front of his car and he lost control over the same, due to which, his car hit with the car of the Anurag Ailawadi and when he stepped down from his car to see the damage, Anurag Ailawadi and his friends started beating him with fist, leg and stick blows and also stole Rs. 55,000/- (cash), a diamond ring and a gold chain. After the said accident, Anurag Ailawadi reported the matter to the Police and F.I.R. No. 188 of 2016, dated 30.07.2016, under Sections 279 & 337 of the Indian Penal code was registered against Devashish Thakur. On 06.08.2016, Devashish Thakur also registered a cross F.I.R. No. 197 of 2016, under Sections 341, 323, 356, 147 & 149 of the Indian Penal Code against Anurag Ailawadi and his friends. However, now the parties have entered into a compromise/Memorandum of Understanding (Annexure P-2) and they do not want to pursue the case against each other. Hence the present petition.

3. Learned counsel for the parties have argued that as the parties have compromised the matter, vide Memorandum of Understanding (Annexure P-2) in presence of the witnesses and they do not want to pursue the cases against each other, as per the terms of the compromise, no purpose will be served by keeping the proceedings against them, hence the F.I.R., alongwith consequent proceedings, arising out of the same, pending before the learned Court below may be quashed and set aside.

4. On the other hand, learned Additional Advocate General has argued that the offence is not compoundable, hence the petition may be dismissed.

5. To appreciate the arguments of learned counsel appearing on behalf of the parties, I have gone through the entire records in detail.

6. Their Lordships of the Honâ??ble Supreme Court in B.S. Joshi and others vs. State of Haryana and another , (2003) 4 SCC 675, have held that if

for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to the exercise of power of

quashing. It is well settled that the powers under section 482 have no limits. Of course, where there is more power, it becomes necessary to exercise

utmost care and caution while invoking such powers. Their Lordships have held as under:

[6] In *Pepsi Food Ltd. and another v. Special Judicial Magistrate and others* ((1998) 5 SCC 749), this Court with reference to *Bhajan Lal's* case

observed that the guidelines laid therein as to where the Court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying

rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole

purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of

course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.

[8] It is, thus, clear that *Madhu Limaye's* case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or

complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view

that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of

quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

[15] In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or

complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

7. Their Lordships of the Honâ??ble Supreme Court in *Preeti Gupta and another vs. State of Jharkhand and another*, (2010) 7 SCC 667, have held

that the ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. The tendency of implicating the husband and all

his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth.

Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. The criminal

trials lead to immense sufferings for all concerned. Their Lordships have further held that permitting complainant to pursue complaint would be abuse

of process of law and the complaint against the appellants was quashed. Their Lordships have held as under:

[27] A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in *Inder Mohan Goswami and Another v.*

State of Uttaranchal & Others, 2007 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:-

“Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

[28] We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.

[35] The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

[38] The criminal trials lead to immense sufferings for all concerned. Even

ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.

8. Their Lordships of the Honâ??ble Supreme Court in *Jitendra Raghuvanshi and others vs. Babita Raghuvanshi and another*, (2013) 4 SCC 58, have held that criminal proceedings or FIR or complaint can be quashed under section 482 Cr.P.C. in appropriate cases in order to meet ends of justice. Even in non-compoundable offences pertaining to matrimonial disputes, if court is satisfied that parties have settled the disputes amicably and without any pressure, then for purpose of securing ends of justice, FIR or complaint or subsequent criminal proceedings in respect of offences can be quashed. Their Lordships have held as under:

[13] As stated earlier, it is not in dispute that after filing of a complaint in respect of the offences punishable under Sections 498A and 406 of IPC, the parties, in the instant case, arrived at a mutual settlement and the complainant also has sworn an affidavit supporting the stand of the appellants. That was the position before the trial Court as well as before the High Court in a petition filed under Section 482 of the Code. A perusal of the impugned order of the High Court shows that because the mutual settlement arrived at between the parties relate to non-compoundable offence, the court proceeded on a wrong premise that it cannot be compounded and dismissed the petition filed under Section 482. A perusal of the petition before the High Court shows that the application filed by the appellants was not for compounding of non-compoundable offences but for the purpose of quashing the criminal proceedings.

[14] The inherent powers of the High Court under Section 482 of the Code are

wide and unfettered. In B.S. Joshi , this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

[15] In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

[16] There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

[17] In the light of the above discussion, we hold that the High Court in exercise

of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.C.R.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore.â??

9. Thus, taking into consideration the law as discussed hereinabove, this Court finds that the interest of justice would be met, in case, the proceedings pending against the petitioners are quashed, as the parties have already compromised the matter, as per Memorandum of Understanding (Annexure P-2), placed on record.

10. Consequently, I find this case to be a fit case to exercise powers under Section 482 of the Code and, therefore, F.I.R. No. 188 of 2016, dated 30.07.2016, under Sections 279 & 337 of the Indian Penal Code and F.I.R No. 197 of 2016, dated 06.08.2016, under Sections 341, 323, 356, 147 & 149 of the Indian Penal code, registered at Police Station Sadar-Hamirpur, District Hamirpur, H.P., are ordered to be quashed. Since F.I.R. No. 188 of 2016, dated 30.07.2016, under Sections 279 & 337 of the Indian Penal Code and F.I.R No. 197 of 2016, dated 06.08.2016, under Sections 341, 323, 356, 147 & 149 of the Indian Penal code, have been quashed, consequent proceedings/Challan pending before the learned Judicial Magistrate First Class, Court No. III, Hamirpur, H.P., are thereby rendered infructuous. However, the same are expressly quashed so as to obviate any confusion.

11. The petition is accordingly disposed of alongwith pending application(s), if any.