

(2021) 09 SHI CK 0104

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 378 Of 2021

Ashwani

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 279, 307

Citation : (2021) 09 SHI CK 0104

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anoop Chitkara, J

This petition coming on for admission this day, the Court passed the following:

FIR No

Dated

Police Station

Sections

166/ 2020

9.7.2020

Sadar Solan, District Solan, H.P.

279, 427, 201 of IPC and Section 187 of M.V. Act.

1. The petitioner, arraigned as accused in the FIR mentioned above, has come up before this Court under Section 482, Code of Criminal Procedure, 1973, for quashing the proceedings because they have compromised the matter.

2. Ld. Counsel for the parties submitted that the parties have resolved the criminal dispute between them and seek quashing of the FIR mentioned above and closure of all consequential proceedings.

FACTS

3. On 9.7.2020, police officials of the above captioned Police Station received information about an accident taking place in Solan bazar during mid-night. The complainant stated that he had parked his vehicle in the parking outside his house. At about 1:35 a.m., he heard a sound of collision and when he came out he saw that a truck had hit his car. He noticed the number of the truck and informed the Police Station. Based on this information, police registered the FIR mentioned above.

ANALYSIS:

4. The following aspects would be relevant to conclude this petition: -

a) On 24.9.2021, a joint statement of Mr. Surender Verma, Advocate for the petitioner and Mr. Ashok Verma, learned counsel for the 2nd respondent (complainant) was recorded in which they stated that the parties have compromised the entire matter with each other without any coercion, duress, pressure, or any wrong tactics. They also request that the above mentioned case FIR and consequent proceedings be quashed.

b) The parties have amicably settled the matter between them in terms of the compromise deed registered at Sr. No.195/2020 dated 18.7.2020 supported by affidavit of complainant, Shiv Kumar Aggarwal without any coercion, duress, pressure or any wrong tactics on behalf of the petitioner/accused.

c) In the given facts, the occurrence does not affect public peace or tranquility.

d) The rejection of compromise may also lead to ill will, and the purpose of criminal jurisprudence is reformatory in nature and to work for bringing peace in family and society.

e) The pendency of trial affects career and happiness.

f) Even if this case is put to trial, the parties are likely to maintain the stand they have taken in this compromise, which is expected to result in the accused's acquittal.

g) Accused is the first offenders.

h) The accused is facing prosecution for the last more than one year.

NON-COMPOUNDABLE OFFENCES CAN BE QUASHED:

5. In the present case, the offence under Section 279 IPC is not compoundable under Section 320 CrPC. However, the following precedents are relevant. In State of Madhya Pradesh v Laxmi Narayan, Cr.A No. 349 of 2019, decided on 5th of

March, 2019, Hon'ble Supreme Court holds, [13]. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved 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;

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court

is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

6. In *Narinder Singh v State of Punjab*, 2014 (2) R.C.R. (Criminal) 482, Supreme Court holds, "[31]. 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:

(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.

CONCLUSION:

7. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter, and such powers can always be

exercised, depending upon the facts and circumstances. In the present case, the offenses are not compoundable under section 320 CrPC. Be that as it may, this Court is inclined to invoke the inherent jurisdiction under section 482 CrPC to quash the FIR and all subsequent proceedings in the peculiar facts and circumstances.

8. Given the entirety of the facts and circumstances of the case and even otherwise, the petitioner cannot be held liable for the said accident and more particularly where the injured has compromised the matter, there is no reason to continue with the proceedings.

9. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, 2018 (4) Crimes 324, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated."

10. In *Shakuntala Sawhney v Kaushalya Sawhney*, (1979) 3 SCR 639, at p 642, Hon'ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

11. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to quash the proceedings mentioned above. The FIR mentioned above is quashed, and all the consequential proceedings are also quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

12. In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.