

(2021) 02 J&K CK 0060

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 255 Of 2011, 70 Of 2012,
IA No. 285 Of 2011, 82 Of 2012

Bablu Devi And Another

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 342, 381, 382
Code Of Criminal Procedure, 1973 — Section 156(3), 320, 482

Citation : (2021) 02 J&K CK 0060

Hon'ble Judges : SANJEEV KUMAR, J

Bench : Single Bench

Advocate : Veenu Gupta, U. K. Jalali, Shivani Jalali

Final Decision : Disposed Of

Judgement

1. This is a petition filed by the petitioners under Section 561-A CrPC for quashing FIR No. 342/2011 under Section 381 RPC registered at Police

Station, Domana, Jammu against the petitioners.

2. Briefly stated, the facts projected by the petitioners in this petition are that the petitioner No. 1 was an employee in a beauty parlour situated at

Bohri, Talab Tillo, Jammu which was being run by respondent No. 3. The petitioner No. 2 is a driver by profession and the husband of petitioner No.

1. It is alleged that owing to some dispute with regard to the salary between the petitioners and respondent No. 3, respondent No. 3 in connivance with

his wife and daughter subjected the petitioner No. 1 to merciless beating and kicked her from the Beauty parlour. The petitioner No. 1 has lodged FIR

No. 60/2011 against respondent No. 3 and his wife for commission of offences under Section 382, 342 and 34 RPC, which is subject matter of

challenge in 561-A CrPC No. 255/2011. This Court has passed an interim order directing the Police not to file charge-sheet in the FIR till next date of hearing.

3. By way of counter blast, respondent No. 3 also filed a complaint before the Court of Chief Judicial Magistrate, Jammu making allegations of theft

against the petitioners. The complaint came to be transferred from the Court of CJM, Jammu to 1st Additional Munsiff, Jammu which forwarded it to

the Police under Section 156 (3) CrPC. Consequently, the Police registered FIR No. 342/2011 which is impugned in this petition. The FIR registered

at the instance of respondent No. 3 is assailed by the petitioner in this petition on several grounds.

4. During the pendency of these petitions, the parties i.e. petitioners and respondent No. 3 have entered into amicable settlement and have decided not

to pursue their FIRs registered against each other. Compromise executed between the parties has also been placed on record.

5. Vide order dated 04.03.2020, this Court while taking cognizance of the settlement arrived at between the parties, directed the parties to appear

before the Registrar Judicial of this Court for recording their statements in support of the compromise deed. In compliance to the order dated

04.03.2020, the statements of the parties have been recorded by the Registrar Judicial of this Court and the parties have substantiated the settlement

drawn in the shape of compromise deed dated 19.11.2019. On the basis of compromise arrived at between the parties and the statements recorded

before the Registrar Judicial of this Court, learned counsel for the petitioners and respondent No. 3 submit that this Court may exercise its inherent

jurisdiction to quash both the FIRs so that the parties bury their hatchet and live peacefully hereinafter.

6. Reliance has been placed by learned counsel for the petitioner on the judgment of the Supreme Court in case of *Narinder Singh & Ors. Vs.*

State of Punjab & anr., 2014 (6) SCC 466 wherein the Court, taking cognizance on the settlement between the parties, permitted the non-

compoundable offences to be compounded. The observations of the Supreme Court in the aforementioned case, which are relevant for the disposal of

instant petitions, are in the following manner:-

10. Apart from narrating the interplay of Section 320 and section 482 of the

Code in the manner aforesaid, the Court also described the extent of power under section 482 of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the offences are not compoundable. In the first instance it was emphasised that the power under section 482 of the Code is not to be resorted to, if there is specific provision in the Code for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised as against the express bar of law engrafted in any other provision of the Code. The Court also highlighted that in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

11. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines: (Gian Singh v. State of Punjab, (2012) 10 SCC 303, para 58)

58. "Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However,

certain offences which overwhelmingly and predominantly bear civil flavor having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard- and-fast category can be prescribed.

12. Thereafter, the Court summed up the legal position in the following words: (Gian Singh case, (supra) 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 plentitude with no statutory limitation but it has to be exercised in accord with the guidelines 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 FIR 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 a 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 flavor 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 the 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 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.

7. From the above position of law as enunciated by the Supreme Court, it is abundantly clear that some settlement between the parties may not be a ground to quash the proceedings by the High Court in respect of serious offences or other offences of mental depravity or offence of dacoit or offences under special statutes like prevention of corruption Act or the offences committed by public servant while working in such capacity. The Court shall refuse to quash the proceedings, even if, there is a settlement arrived at between the parties. In the instant case, the dispute between the parties overwhelmingly and predominantly has civil flavor, the registration of FIR and counter FIR emanates from a dispute between the employer and employee and, therefore, falls within the permissible parameters laid down by the Supreme Court for quashing the proceedings on settlement between the parties.

8. In view of the aforesaid legal position and factual backdrop, I am of the view that allowing the investigation in the impugned FIRs would be sheer abuse of process of law. Accordingly, both the FIRs i.e., one impugned in CRMC No. 70/2012 and other in CRMC No. 255/2012 are quashed.