

**(2019) 09 DEL CK 0140**

**In the Delhi High Court**

**Case No :** Criminal Writ Petition No. 2227 Of 2019

Babu Khan And Anr

APPELLANT

Vs

State & Ors

RESPONDENT

**Date of Decision :** 05-09-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 288, 304A, 307  
Code Of Criminal Procedure, 1973 — Section 320, 482

**Citation :** (2019) 265 DLT 174 : (2019) 4 JCC 3557

**Hon'ble Judges :** Vibhu Bakhru, J

**Bench :** Single Bench

**Advocate :** Tarun Arora, Rahul Tandon, Rahul Mehra, Amanpreet Singh

## Judgement

Vibhu Bakhru, J

1. The petitioners have filed the present petition, inter alia, praying that FIR No.72/2019, under Section 288/304-A of the Indian Penal Code, 1860 (IPC) registered with PS Patel Nagar, be quashed.

2. The present petition is premised on the basis that the petitioners, who are accused in the said FIR and respondent nos.2, 3 and 4, (who are the legal heirs of the deceased), had entered into a settlement in terms of which they had agreed to accept a sum of Rs. 8 lakhs, in full and final settlement of their claims.

3. The FIR was lodged at the instance of Sekh Temul, who was working as a raj mistri for petitioner no.1. He had also stated that he was working on two sites. The incident had occurred on 18.02.2019. A perusal of the said FIR indicates that shuttering iron sheets were being removed and transported by a shaft. The deceased was also involved in carrying out the said works. It is stated that one iron sheet had hit the deceased (Nephoool). He was immediately taken to the hospital, where he was declared dead.

4. Prima facie, it appears that the accident had occurred while Nephoool was carrying out the work in question and it would be difficult to establish any

negligence on part of the petitioners.

5. The legal heirs of the deceased have entered into a settlement with the petitioners and had agreed to accept a sum of Rs. 8 lakhs, in full and final settlement of all their claims.

6. Mr Mehra, learned Standing Counsel appearing for the State submits that the present case is filed under Section 304A of the IPC and in certain cases, FIR relating to such offences have not been quashed by mutual consent. He has also submitted that under the Employee's Compensation Act, 1923, the heirs of the deceased would be entitled to Rs. 9 lakhs.

7. He has also drawn the attention of this Court to the decision of the Coordinate Bench of this Court in Bhajan Lal Sharma v. State (Govt. of NCT of Delhi) & Ors.: W.P.(Crl) 1280/2016, decided on 01.08.2016.

8. Insofar as the contention is concerned, that the FIR registered under Section 304A of the IPC cannot be quashed, the same is unmerited. The decision in the case of Bhajan Lal Sharma v. State (Govt. of NCT of Delhi) & Ors. (supra) is not an authority for the proposition that the Court cannot quash an FIR, alleging an offence under Section 304-A of the IPC, under any circumstances. The said decision was rendered in the peculiar facts of that case. The Court had noted that the offence in that case could not be described as private in nature, as the same had an impact on the society and quashing of the FIR in such a case would send a wrong message that contractors/authorities/entities could get away with gross negligence, resulting in loss of innocent lives, by merely paying compensation to the victim/the legal heirs of the victim. It is relevant to note that the said case was against a building contractor (accused), who was engaged to carry on construction work on a plot of land in New Friends Colony. In that case, certain labourers had died on being buried under debris. It was the prosecution's case that on investigation, it was revealed that the accused had caused excavation of a basement in a dangerous manner, which had resulted in debris and soil falling and burying the labourers. One of the labourers had died and several others were injured. Clearly, in the facts of that case, the facts, prima facie, indicate that there is gross negligence in carrying out the excavation works. In the circumstances, the quashing of the FIR on a private settlement, would undoubtedly send an incorrect message.

9. In Gian Singh v. State of Punjab and Anr.: (2012) 10 SCC 303, the Supreme Court has explained that there is a distinction between compounding of an offence under Section 320 of the Code of Criminal Procedure, 1973 (Cr.P.C), and quashing of a case by the High Court in exercise of its inherent powers under Section 482 of the Cr.P.C. The Court had held as under:-

"61....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 pre-dominantly civil favour 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, 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.

10. A similar view was also expressed by the Supreme Court in its later decision in *Narinder Singh and Ors. v. State of Punjab*: (2014) 6 SCC 466. In its decision, the Court also laid down certain guidelines which the Court requires to bear in mind while considering inherent powers, under Section 482 of the Cr.P.C, to quash proceedings on the basis of a settlement arrived at between the concerned parties. The relevant extract of the decision setting out the guidelines is set out below:-

"29. 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:

29.1. 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.

29.2. 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.

29.3. 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.

29.4. 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.

29.5. 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.

29.6. Offences under Section 307 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code. 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.

29.7. 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 Indian Penal Code 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 Indian Penal Code 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."

11. In *Parbatbhai Aahir v. State of Gujarat*: (2017) 9 SCC 641, the Supreme Court, inter alia, observed that "the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated."

12. The question whether an FIR, alleging an offence under Section 304A of the IPC, can be quashed under Section 482 Cr.P.C. on the basis of a settlement arrived at between the accused and the victims of the incident, is required to be examined on the facts of each case. In a recent decision in *State of Madhya Pradesh v. Laxmi Narayan & Ors.*: (2019) 5 SCC 688, the Supreme Court had

referred to various other decisions and had summarized the law relating to the powers exercised under Section 482 of the Cr.P.C. for quashing criminal proceedings, in the following words:-

"15. 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:

15.1 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;

15.2 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;

15.3 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;

15.4 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;

15.5 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."

13. In *State of Maharashtra vs. Vikram Anantrai Doshi*: (2014) 15 SCC 29, the Supreme Court had held that:-

"26. ....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 that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence..."

14. In view of the above, it would be necessary for this Court to briefly examine the nature of the allegation and the factual context in which the same has been made, in order to determine whether the ends of justice would be served in quashing the FIR.

15. It does appear from the FIR (FIR No. 72/2019) that this is a case of an accident where one of the persons, who was involved in carrying the said material, was injured and had succumbed to his injuries. As stated in the FIR, the complainant (Sekh Temul- raj mistri) alleges that petitioner no.1 (contractor) had directed raj mistri, Baliram (petitioner no.2 herein) and raj mistri, Nephool (the victim), to bring down shuttering iron sheets through the shaft and had also directed Nephool to keep the iron sheets on the side.

16. At about 4:30 pm on the date of the incident (i.e. on 18.02.2019), Baliram (petitioner no.2) had got the sheet down by using the shaft and the said iron sheet hit the head of Nephool, which resulted in severe bleeding. Baliram and the complainant had taken the victim (Nephool) to Sardar Vallabh Bhai Hospital, where he was pronounced dead by the doctor.

17. Thereafter, a settlement was arrived at between petitioner no.1 and the family members of the victim. In the said settlement agreement, it was stated that the death of the victim occurred since a shuttering plate had fallen on his head.

18. The agreement recorded that the contractor (petitioner no.1) had paid a sum of Rs. 8,00,000/- as compensation and had borne the expenses to send the dead body to the native village. In lieu of the same, the family of the victim stated that they would not pursue any court or police proceedings.

19. A status report was filed by the concerned SHO before this Court, wherein it was stated that the petitioners had been arrested and had been released on bail. The information of the incident had been given to the Joint Labour Commissioner/ West, F-Block, Karampura, Delhi. The case is pending investigation and the charge sheet is yet to be filed. The status report further

noted that a settlement had been entered into between the accused and the family of the victim, and that the family of the victim (wife and three sons) do not want to take any further action in the said matter.

20. In *Jacob Mathew v. State of Punjab and Anr.*: (2005) 6 SCC 1, the Supreme Court had explained that for a negligent act to constitute an offence, under Section 304A of the IPC, the same should be gross negligence and an element of mens rea must be shown to exist. The Court had further explained that the degree of negligence which is punishable under Section 304A of the IPC should be of a high degree. The Court had observed as under:-

"48. We sum up our conclusions as under:

...(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'..."

21. Thus, while evaluating whether a proceeding relating to an alleged offence, under Section 304A of the IPC, be quashed on the basis of a settlement between the accused and the victim, it would also be necessary to consider whether it is probable that the facts presented would constitute gross negligence and an element of mens rea, which is likely to secure a conviction.

22. It is clear that the deceased and other persons were involved in the manual labour of carrying the iron sheets. There does not appear to be much material to establish that the contractor was carrying on work in a dangerous manner. The accident had occurred in the course of the work being performed by the deceased and other workers. This Court is of the view that given the account rendered by the persons, it is improbable to secure a conviction. Thus, this Court is of the view that the ends of justice would be served in ensuring that the petitioners pay the compensation and the FIR be quashed.

23. Insofar as the quantum of compensation is concerned, learned counsel appearing for the petitioners submits that the petitioners would pay a further sum of Rs. 1 lakh to respondents no. 2, 3 and 4. He submits that a sum of Rs. 8 lakhs was paid to respondents no. 2, 3 and 4 in cash, and was deposited by the respondents in a fixed deposit.

24. The receipts of the amount paid have not been placed on record. In view of the above, before proceeding further, this Court considers it apposite to direct

the State to file the status report. Let the status report be filed after making due inquiries as to whether the sum of Rs. 8 lakhs has been received by respondents no. 2, 3 and 4.

25. List on 13.09.2019.