

**(2021) 02 SHI CK 0105**  
**In the High Court Of Himachal Pradesh**  
**Case No : CR. MMO No. 35 Of 2021**

Bhim Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

**Date of Decision :** 04-02-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 173, 245, 320, 482  
Indian Penal Code, 1860 — Section 34, 279, 307, 337  
Code Of Criminal Procedure, 1898 — Section 561A

**Citation :** (2021) 02 SHI CK 0105

**Hon'ble Judges :** Anoop Chitkara, J

**Bench :** Single Bench

**Advocate :** Vinod Chauhan, Vikas Rathour, Guleria, Bhupinder Thakur Rajat Chauhan, Anil Kumar

**Final Decision :** ?Allowed

## Judgement

Anoop Chitkara, J

1. For quashing of FIR and consequential proceedings, the accused (petitioner) and complainant, who are respondents No.4 to 7, have come up before

this Court under Section 482 CrPC on the grounds that they have resolved their dispute through compromise.

2. Based on the complaint of one Shiv Kumar, which disclosed cognizable and non-bailable offences, an FIR No.1 of 2021 dated 1.1.2021, was

registered at Police Station, Paonta Sahib, District Sirmour, H.P. The investigation revealed that on 31.12.2020 in the night near Vijay Medical Store at

Devinagar, Paonta Sahib, an accident took place due to rash and negligent driving of the accused and the vehicle driven by the accused hit 2-3 other

vehicles. In the said accident, complainant Shiv Kumar received injuries, who was shifted to CHC, Paonta Sahib and after his medical check up, MLC

was received. After completion of the investigation, the police filed report under Section 173 Cr.P.C.

3. The present petition has been filed jointly by accused, Bhim Singh, complainant-injured Shiv Sharma and other occupants of the vehicles. The

contents of the petition reveals that the accused and complainant have entered into an out of Court settlement as per compromise dated 4.1.2021.

Photocopy of the same is placed on record as Annexure P-2.

4. On 20.1.2021, notices were issued to the respondents. Today, this matter was taken up in Physical Court as all the parties were present, except Shri

Rajat Chaudhary (respondent No.7). Complainant, Shri Shiv Sharma, Shri Rajesh Kumar and Shri Dayal Singh Negi, are present and their statements

were recorded separately, on oath. Shri Rajesh Kumar and Shri Dayal Singh Negi, submitted on oath that only Shiv Kumar had received injury and

neither Rajesh Kumar, nor Dawal Singh or Rajat had received any injury in that accident.

5. Given the fact that no injuries were received by Shri Rajat Chaudhary (respondent No.7), no difference would be made if his statement is not recorded.

6. Learned Additional Advocate General has also handed over the reply-status report in the Court, which is taken on record.

7. Although, the withdrawal of FIR would be through District Magistrate as a normal procedure. However, there is inherent jurisdiction of the High

Court under Section 482 of the Code of Criminal Procedure to intervene in such kind of matter and it is not the requirement of law that the

cancellation has to be approved only through the District Magistrate. Inherent Jurisdiction of High Court under section 482 CrPC can always be

exercised, depending upon the facts and circumstances of each and every case.

8. Even if this case is put to trial, the parties are likely to maintain the stand which they have taken in this compromise which is likely to result in the

acquittal of the accused. The parties are likely to live peacefully and intervention at this stage would create cordial environment for peaceful relation

between them.

9. If the inherent jurisdiction under Section 482 CrPC is not invoked, then it may lead to bitterness in relations. Every time the accused will be

summoned in the Court, he would blame complainant for the money spent on

case and travel.

#### STAGE OF QUASHING FIR:

10. In *Ashok Chaturvedi and others v. Shitul H. Chanchani and another*, 1998(7) SCC 698, Honâ??ble Supreme Court holds that the determination of

the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of

framing the charge. The Court observed thus :-

â??. â??. â??. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of

charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred

from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the

accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have

been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be

exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition

do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case

power under section 482 of the Code can be exercised.

11. In *Kunstocom Electronics (I) Pvt. Ltd. v. Gilt Pack Ltd. and another*, (2002) 2 SCC 383, Honâ??ble Supreme Court holds as under:-

8. â??. â??. â??. There is no hard and fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to

be raised only at the time of framing the charge.

12. In *Girish Sarwate v. State of A.P.*, 2005(1) R.C.R.(Criminal) 758, the Full Bench of Andhra Pradesh High Court holds as under:-

30. In the light of these judgments of the Supreme Court, we have no doubt in our mind that under Section 482 of the Code of Criminal Procedure, the

High Court has the power to quash an FIR or even a complaint subject to limitations and conditions laid down by the Honâ??ble Supreme Court in

various judgments. It need not wait for completion of investigation and taking cognizance by the Magistrate. There is no dispute that this power has to

be exercised by the High Courts very sparingly with circumspection and also in rarest of rare cases. Though there are limitations on exercise of power

by the High Court, yet that would not in any way suggest that High Court lacks the power.

#### JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

13. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866, a three Judges Bench of Honâ??ble Supreme Court observed as under:-

6. â?|. â?| ...It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to

prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused

person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory

stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However,

we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be

cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused

person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the

criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is

a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing the proceedings on that ground.

Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First

Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in

such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide

whether the offence alleged is disclosed or not. In such case, it would be legitimate for the High Court to hold that it would be manifestly unjust to

allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the

High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do

constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to

prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case where there is no legal evidence or

where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its

appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A, the High Court would not embark upon

an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to

any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against

the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the

matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, AIR 1928

Bom 184, Jagat Chandra Mozumdar v. Queen Empress, ILR 26 Cal 786, Dr. Shankar Singh v. State of Punjab, 56 Pun LR 54 : (AIR 1954 Punj 193),

Nripendra Bhusan Roy v. Gobina Bandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v. Sivarama Subramania, ILR 47 Mad 722 :

(AIR 1925 Mad 39).

14. In *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre*, 1988 (1) SCC 692, the Honâ??ble Supreme Court has held as under :-

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features

which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the

basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and,

therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the

special facts of a case also quash the proceeding even though it may be at a preliminary stage.

#### JUDICIAL PRECEDENTS ON QUASHING ON COMPROMISE:

15. In *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Ors. vs. State of Gujarat & anr.*, Criminal Appeal No. 1723 of 2017, decided on

4.10.2017, a Three Judges Bench of Honâ??ble Supreme Court, laid down the broad principles for quashing of FIR, which are reproduced as

follows:

15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The

provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement

has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of section 320 of the Code of Criminal Procedure, 1973. The

power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent

an abuse of the process of any court;

(v) 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;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due

regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity

cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in

nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public

interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They

stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil

flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions

(viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of

a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to

a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the

balance.

16. A three Judges Bench of Honâ??ble Supreme Court, in *Gian Singh v. State of Punjab*, 2012(10) SCC 303, has settled the law on quashing on

account of compromise/compounding, in the following terms:

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior

court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which

means that the provision is an overriding provision. These words leave no

manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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 wrong doing that seriously endangers and threatens well-being of 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 permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour 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 victim and the offender and 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 F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of 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.

17. In Criminal Appeal No. 349 of 2019, titled as State of Madhya Pradesh vs. Laxmi Narayan, decided on 5th of March, 2019, the Honâ??ble

Supreme Court has held as under:

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.

14. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC

mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused.

#### RELIEF:

18. In view of the entirety of the facts of the case, as well as judicial precedents, a few of which have been mentioned hereinabove, I am of the considered opinion that continuation of these proceedings will only cause unnecessary burden on the trial Court but in all likelihood is going to cause distressing hardship on both the accused as well as the accused, without resulting into any fruitful purpose whatsoever. Moreover, our trial Courts are already burdened with so many cases and it will be a total wastage of the valuable time of the Courts. If these types of proceedings are permitted to be continued and the accused are prosecuted, it will serve no purpose whatsoever. Therefore, I am of the considered opinion that 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 above mentioned FIR and consequent proceedings.

19. In Himachal Pradesh Cricket Association v. State of Himachal Pradesh (SC); 2018 (4) Crimes 324, Honâ??ble Supreme Court holds as under:-

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.

#### CONSEQUENCES:

20. In *Shakuntala Sawhney v. Kaushalya Sawhney*, (1979) 3 SCR 639, at p 642, Honâ??ble Supreme Court observed as follows:

The finest hour of Justice arise propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.

21. Consequently, this petition is allowed and FIR No.1 of 2021, dated 1.1.2021, registered at Police Station, Paonta Sahib, district Sirmour, (H.P.) for

the commission of offences punishable under Sections 279, 337 of the Indian Penal Code, is quashed. Since FIR has been quashed, all the

consequential proceedings, if any, are also quashed and set aside. The bail bonds are accordingly cancelled and discharged.

Pending application(s), if any, also stands disposed of.