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**(2019) 06 SHI CK 0029**  
**In the High Court Of Himachal Pradesh**  
**Case No : Cr.MMO No. 153 Of 2019**

Chander Mohan Thakur

APPELLANT

Vs

State Of Himachal Pradesh & Another

RESPONDENT

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**Date of Decision :** 24-06-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 245, 320, 482  
Indian Penal Code, 1860 — Section 71, 279, 337, 338, 561A

**Citation :** (2019) 06 SHI CK 0029

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

**Bench :** Single Bench

**Advocate :** I.N. Mehta, Ritta Goswami, Divya Sood, Saurav Rattan

**Final Decision :** Allowed

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## Judgement

Anoop Chitkara, J

1. The present petition is under Section 482 Cr. P.C. for quashing of F.I.R. No. 231/18, dated 3-11-2018, registered at Police Station Dhalli, District -Shimla (H.P.) under Sections 279 and 337 IPC and for quashing of all consequent Criminal proceedings.

2. The present F.I.R. stands registered on the basis of information given by Dharuv Kumar, who has been arrayed as respondent No. 2 in the present petition.

FACTS:

3. The gist of the entire case is as follows:

(a) The present FIR was registered on the basis of information given by Dharuv Kumar (respondent no.2.) to police Station-Dhalli, Shimla, H.P.

(b) He has stated that he is driver by profession and is also an apprentice with a mechanic.

(c) On 3-11-2018 at 2:00 p.m., (day time) he received a phone call from

Manohar Singh that his vehicle required servicing. Then to bring that vehicle for servicing, he went to the house of Manohar Singh which is near I.H.M. at Kufri. From there he brought his car bearing registration No. HP63A-4231 from Kufri. Beside him, Manohar Singh, and Arun Jaryal were also sitting in the car.

(d) At about 2:25 p.m., when he reached at a place Thanda Pani near Chharabra, then from the opposite direction, a Santro Car, bearing registration No. CH01Y-1364, came with a very high speed and hit his car. Both the cars suffered extensive damage and people sitting in both the cars received injuries. Later on he came to know name of the driver of the Santro car as Chander Mohan Thakur (petitioner)

(e) The present petition has been filed by the accused Chander Mohan Thakur for quashing of FIR. In this petition, in paragraph no. 2, petitioner claimed that at the time of accident there was a dense fog and due to low visibility accident took place.

(f) He further stated on affidavit that he had applied brakes and also blew horn but respondent no. 2 got confused and the vehicles skidded and collided with each other.

(g) He further stated that after the accident, first aid was given to the injured persons, who were discharged on the same date.

(h) That on the spot the matter had been compromised between the parties but police insisted upon registration of FIR.

(i) Now the parties have entered into a written compromise which has been placed on record as annexure P2.

(j) Sh. Dharuv (respondent no.2) had put in appearance in the Court on 19th June, 2019. He made a statement on oath that he has compromised the entire matter with the accused Chander Mohan, the present petitioner.

(K) Similarly, the statement of Manohar Singh, one of the injured, was also recorded. He also stated that he has compromised the matter with the present petitioner. The statements are placed on record.

#### REASONING:

4. The following aspects would be relevant to arrive at a final conclusion in this petition: -

(a) When the accident had taken place then only witnesses to such accident were petitioner, Dharuv (respondent no.2), Arun Jaryal, Manohar Singh, Promila and Sheetal, who were sitting in these two vehicles.

(b) Mr. I.N.Mehta, Advocate for the petitioner has placed on record another compromise deed dated 18th June, 2019, which has been entered into between all the injured persons and between all the occupants of the car.

(c) As per the evidence collected on the spot as well as inferable from compromise deeds, only minor injuries were received by the occupants of the cars.

(d) All the injured persons have amicably settled the matter between them and stated that at the time of accident, there was dense fog. It was also raining and due to this visibility was very low.

(e) The entire facts and evidence, point out that accident just happened due to factors beyond the control of humans and not because of the fault of any of the driver, certainly not because of the petitioner/accused.

(f) Judicial notice can be taken of the fact that when it is raining, then the friction between tyres of the vehicle and the surface of the road reduces. Secondly, on the day of accident it was raining, therefore, the skidding is possible in hilly roads.

(g) 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. 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.

(g) 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.

#### STAGE OF QUASHING FIR:

5. In *Ashok Chaturvedi and others v. Shitul H. Chanchani and another*, 1998(7) SCC 698, Hon'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 :-

".... .... 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."

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

"8. .... 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."

#### JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

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

"6. .... 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))."

8. In *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandojirao Angre*, 1988 (1) SCC 692, a three judges bench of the Hon'ble Supreme Court holds:-

"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:

9. A three Judges bench of Hon'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."

10. 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 Hon'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."

11. In the present case, the offences are not compoundable under section 320 CrPC. However, in view of the entire facts and circumstances of the case, the inherent jurisdiction under section 482 CrPC can be invoked to quash the FIR and subsequent proceedings.

12. A Full Bench of Madhya Bharat High Court, in *State v. Gulam Meer* (Madhya Bharat), AIR 1956 (Madhya Bharat) 141, holds,

"16. An offence under Section 279, I.P.C. is distinct from an offence under Section 337 or Section 338, I.P.C. and, therefore, a person convicted of an offence under Section 337 or Section 338, I.P.C. can also be convicted for an offence under Section 279, I.P.C. If, however, the two offences are committed in the same transaction, Section 71, I.P.C. will govern the assessment of punishment."

13. A Co-ordinate Bench of this High Court, in *Vinod Kumar Vs. State of HP* in Cr. M.M.O No. 14 of 2019 decided on 8-01-2019 held as under:

"11. In the case at hand also, the offences alleged against the accused do not involve offences of mental depravity or of heinous nature like rape, dacoity or murder and as such, with a view to maintain harmony and peace in society, this court deems it appropriate to quash the FIR as well as consequential proceedings, especially keeping in view the fact that the complainant has compromised the matter and he is no longer interested in carrying on with the criminal proceedings against the accused. Otherwise also, possibility of conviction in the case is bleak and remote, since complainant himself is not interested in

carrying on with the criminal proceedings initiated at his behest."

14. 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 Courts but in all likelihood is going to cause distressing hardship on both the victim 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.

15. In Himachal Pradesh Cricket Association v. State of Himachal Pradesh (SC); 2018 (4) Crimes 324, Hon'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:

16. In Shakuntala Sawhney v. Kaushalya Sawhney, (1979) 3 SCR 639, at p 642, Hon'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."

17. Consequently, this petition is allowed and the F.I.R. No. 231/18 dated 03-11-2018, registered at Police Station Dhalli, District Shimla (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.

18. The bail bonds are accordingly discharged.

19. Petition is allowed. All pending application(s), if any, also stand disposed of.