
(2018) 07 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : CrMMO No. 276 of 2018

Dolma Sherpa

APPELLANT

Vs

State of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154, 320, 482
Indian Penal Code, 1860 — Section 279, 337, 304AA

Citation : (2018) 07 SHI CK 0008

Hon'ble Judges : SANDEEP SHARMA, J

Bench : Single Bench

Advocate : Kulbhushan Khajuria, S.C. Sharma, Dinesh??Thakur, Amit??Kumar

Final Decision : Disposed of

Judgement

Sandeep Sharma, J.

1. By way of instant petition filed under Section 482 CrPC, prayer has been on behalf of the petitioner-complainant (hereinafter, â??complainantâ??)

for quashing of FIR bearing No. 43/17 dated 29.6.17 under Sections 279, 337 and 304AA IPC, registered at Police Station, Bharmour, District

Chamba, Himachal Pradesh. By way of petition at hand, she has also prayed for quashing of consequential proceedings pending, if any, in the

competent Court of law.

2. Facts, as emerge from the record art that on 29.6.2017, complainant got her statement recorded under Section 154 CrPC with the Police Station,

Bharmour, alleging therein that on 29.6.2017 when her mother was working in the canteen, at about 3.45 pm, she heard some noise and found that

water tipper belonging to Gammon India Limited had fallen upon the shed, wherein her mother Jagmo Lama was working. In the aforesaid incident,

mother of the complainant lost her life. On the basis of aforesaid statement, FIR came to be lodged against respondent No.2, who is behind bars since 19.11.2017 i.e. for more than eight months now.

3. Petitioner has averred in her petition that she with the intervention of the elders in the family has resolved to settle the dispute amicably inter se her and respondent No.2-accused Rajinder Kumar, who has already suffered for more than eight months. Petitioner has further averred that since work of project stands duly completed, she has no work and as such, she wants to go back to her place in Nepal alongwith her maternal aunt.

4. This Court, solely with a view to ascertain correctness and genuineness of the averments contained in the petition caused presence of the complainant, who, on oath, stated before this Court that she does not want to pursue the case and has no objection in case FIR lodged at her behest and consequential proceedings thereto are ordered to be quashed and set aside. She further stated that though in the unfortunate incident, she lost her mother but it was merely an accident and she does not want any action to be taken against respondent-accused pursuant to FIR lodged by her. She further stated that otherwise also, she being all alone, is not in a position to pursue her case and wants to go back to her native place in Nepal. Her statement has been recorded and placed on record.

5. Having carefully perused the averments contained in the petition as well as statement given by the complainant in the court, prayer made in the instant petition deserves to be considered.

6. Since the instant petition has been filed under Section 482 Cr.P.C, this Court deems it fit to consider the same in the light of the judgment passed by Honâ??ble Apex Court in Narinder Singh and others versus State of Punjab and another (2014)6 Supreme Court Cases 466, whereby Honâ??ble Apex Court has formulated guidelines for accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Perusal of judgment referred above clearly depicts that in para 29.1, Honâ??ble Apex Court has returned the findings that 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 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 great caution. Para Nos. 29 to 29.7 of the judgment are reproduced as under:-

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 under Section 482 Cr.P.C 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 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.

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 to 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??.

7. Careful perusal of para 29.3 of the judgment suggests that such a power is not to be exercised in the cases 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.

Apart from this, offences 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. On the other hand, those

criminal cases having overwhelmingly and predominantly civil character, particularly arising out of commercial transactions or arising out of

matrimonial relationship or family disputes may be quashed when the parties have resolved their entire disputes among themselves.

8. The Honâ??ble Apex Court in case *Gian Singh v. State of Punjab and anr.* (2012) 10 SCC 303 has held that power of the High Court in quashing

of the criminal proceedings or FIR or complaint in exercise of its inherent power is distinct and different from the power of a Criminal Court for

compounding offences under Section 320 Cr.PC. Even in the judgment passed in *Narinder Singh*â??s case, the Honâ??ble Apex Court has held

that while exercising inherent power of quashment under Section 482 Cr.PC the Court must have due regard to the nature and gravity of the crime

and its social impact and it cautioned the Courts not to exercise the power for quashing proceedings in heinous and serious offences of mental

depravity, murder, rape, dacoity etc. However subsequently, the Honâ??ble Apex Court in *Dimpey Gujral and Ors. vs. Union Territory through*

Administrator, UT, Chandigarh and Ors. (2013) 11 SCC 497 has also held as under:-

â??7. In certain decisions of this Court in view of the settlement arrived at by the parties, this Court quashed the FIRs though some of the offences

were non- compoundable. A two Judgesâ?? Bench of this court doubted the correctness of those decisions. Learned Judges felt that in those

decisions, this court had permitted compounding of non-compoundable offences. The said issue was, therefore, referred to a larger bench. The larger

Bench in *Gian Singh v. State of Punjab* (2012) 10 SCC 303 considered the relevant provisions of the Code and the judgments of this court and

concluded as under: (SCC pp. 342-43, 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 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 victimâ??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-dominatingly civil flavour 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.â? (emphasis

supplied)

8. In the light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would

tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the

society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of

the case, FIR No. 163 dated 26.10.2006 registered under Section 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3,

Chandigarh and all consequential proceedings arising there from including the final report presented under Section 173 of the Code and charges

framed by the trial Court are hereby quashed.â??

9. Recently Honâ??ble Apex Court in its latest judgment dated 4th October, 2017, titled as Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur

and others versus State of Gujarat and Another, passed in Criminal Appeal No.1723 of 2017 arising out of SLP(Crl) No.9549 of 2016, reiterated the

principles/ parameters laid down in Narinder Singhâ??s case supra for accepting the settlement and quashing the proceedings. It would be profitable

to reproduce para No. 13 to 15 of the judgment herein:

â??13. The same principle was followed in Central Bureau of Investigation v. Maninder Singh (2016)1 SCC 389 by a bench of two learned Judges of

this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468

and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra

(as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such

a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

â??â?In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at

large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed

with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the

ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are

not allowed to continue, the entire community is aggrieved.

14. In a subsequent decision in State of Tamil Nadu v R Vasanthi Stanley (2016) 1 SCC 376, the court rejected the submission that the first

respondent was a woman â??who was following the command of her husbandâ? and had signed certain documents without being aware of the

nature of the fraud which was being perpetrated on the bank. Rejecting the submission, this Court held that:

â??... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented

on gender leaves us unimpressed. An offence under the criminal law is an

offence and it does not depend upon the gender of an accused. True it is, there are certain provisions in Code of Criminal Procedure relating to exercise of jurisdiction Under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case.

We say no more on this score.â

âA grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system.â

15. The broad principles which emerge from the precedents on the subject may be summarized 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 recognizes 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.â??

10. Accordingly, in view of the averments contained in the petition as well as the submissions having been made by the learned counsel for the

petitioner, that the complainant is no more interested in pursuing the case, and keeping in mind the well settled proposition of law as well as the

statement of the complainant recorded on oath before the Court, this Court has no inhibition in accepting the prayer made in the present petition and

quashing the FIR as well as consequential proceedings pending in the trial Court. Moreover, the Hon'ble Apex Court in the judgment supra, has

observed that power under Section 482 CrPC is not to be exercised in those cases which involve heinous and serious offences of mental depravity or

offences like murder, rape, dacoity, etc. In the present case, since complainant herself is not interested in pursuing the criminal case against

respondent No.2 and wants to leave the country for her native place in Nepal, as such, chance of conviction in this case are bleak and no fruitful

purpose will be served in continuing with the criminal proceedings against the accused.

11. Consequently, in view of the peculiar facts and circumstances of the case, wherein complainant does not want to pursue the matter, this Court

while exercising power vested in it under Section 482 Cr.P.C., deems it fit to accept the prayer having been made by the learned counsel representing

the petitioner, as such, the petition is allowed. FIR bearing No. 43/17 dated 29.6.17 under Sections 279, 337 and 304AA IPC, registered at Police

Station, Bharmour, District Chamba, Himachal Pradesh and consequential proceedings pending in the competent Court of law are quashed and set

aside. Respondent No.2-accused is acquitted of the offences punishable under Sections 279, 337 and 304AA IPC. He is ordered to be released

forthwith, if not required in any other case by the police.

12. Registry is directed to prepare and send the release warrant of the respondent No.2-accused to the quarter concerned, forthwith. Pending

applications, if any, are also disposed of.