

(2018) 09 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition No. 418 of 2018

Faisel Babu Naduvil Parambil

APPELLANT

Vs

State of Himachal Pradesh & Anr

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 320, 482

Citation : (2018) 09 SHI CK 0036

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Subhash Chandran K.R., Dinesh Thakur, Amit Kumar, S.C. Sharma

Final Decision : Disposed Off

Judgement

Sandeep Sharma, J.

1. In the instant proceedings, filed under S. 482 CrPC, a prayer has been made on behalf of petitioner for quashing of FIR No. 210/17 dated

22.9.2017, under Ss. 420 and 120B IPC, registered at Police Station Sadar, District Bilaspur, Himachal Pradesh as well as consequential proceedings

pending in the court of learned Chief Judicial Magistrate, Bilaspur.

2. For having a bird's eye view, necessary facts as emerge from the record are that respondent No.2, Smt. Sunita Thakur filed a complaint before

the Judicial Magistrate 1st Class, Bilaspur under S 156(3) CrPC, alleging therein that persons namely Alisha and Gulshan Khan fraudulently made her

to deposit a sum of Rs.6.00 Lakh in the bank account of person namely Mustafa at Kerala on the pretext of getting work visa in favour of her son.

Above named complainant also alleged that Alisha and Gulshan Khan assured her that her son would be provided with work visa, however, the fact

remains that neither work visa was provided to her son nor money was refunded, as such, she was compelled to file complaint under Section 156(3)

before the Judicial Magistrate 1st Class, Bilaspur.

3. On the direction of the Judicial Magistrate 1st Class, Bilaspur, FIR detailed herein above came to be lodged at Police Station Sadar, Bilaspur.

During investigation, police found involvement of the present petitioner as well as other persons namely Mustafa and Jafar Shah in the crime, in as

much as amount of Rs.6.00 Lakh was found to have been deposited in the saving bank account of Mustafa at Kerala on the askance of the present

petitioner and Jafar Shah. Person namely Mustafa, by way of a petition i.e. CrMP(M) No. 166 of 2018, prayed for grant of bail on the ground that an

amount of Rs.8.00 Lakh stands paid to respondent No.2, however, aforesaid prayer of said person was not accepted in those proceedings, who

thereafter filed an independent petition i.e. CrMMO No. 95 of 2018 under S. 482 CrPC, praying therein for quashment of FIR, as has been taken note

herein above as well as consequential proceedings pending before the learned Chief Judicial Magistrate, Bilaspur.

4. This court having taken note of the compromise entered into between complainant-Sunita Thakur and Mustafa, whereby she was paid a sum of

Rs.8.00 Lakh in lieu of Rs.6.00 Lakh allegedly paid by her for procuring work visa for her son, quashed FIR No. 210/2017, dated 22.9.2017, vide

judgment dated 26.6.2018, qua him (Mustafa) only.

5. Mr. Sanjeev Bhushan, learned Senior Advocate duly assisted by Mr. Subhash Chandran K.R. Advocate, while inviting attention of this Court to the

judgment dated 26.6.2018 passed by this court in CrMMO No. 95 of 2018, titled Mustafa vs. State of Himachal Pradesh, contended that since

complainant-Sunita Thakur has already made a statement before this Court that she has received a sum of Rs.8.00 Lakh, as such, FIR lodged at her

behest may be quashed and set aside, present petition having been filed by petitioner also deserves to be allowed. Mr. Bhushan, learned Senior

Advocate, while making this court travel through the record, especially the status report fled by respondent-State, during the proceedings of the

petition, strenuously argued that there is no evidence, if any, collected on record by investigating agency suggestive of the fact that role, if any, was

ever played by the present petitioner at any stage of crime having been allegedly

committed by him, as well as other accused, Alisha and Gulshan Khan.

Mr. Bhushan, learned Senior Advocate, contended that as per investigation, Sunita Thakur (complainant) had deposited a sum of Rs.6.00 Lakh in the account of Mustafa, who in his statement given to the police, stated that he was disclosed by the Jafar Shah, that some money was to be transferred to his (Mustafa) account and that would be used for the construction of his (Jafar Shah) house. Mr. Bhushan, learned Senior Advocate also contended that even bare perusal of complaint having been filed by the complainant to the Judicial Magistrate 1st Class under S. 156(3) CrPC, nowhere reveals role, if any, of the present petitioner, in the alleged crime, rather, specific allegation is/was against Alisha and Gulshan Khan, who allegedly made her deposit some amount into the saving bank account of Mustafa. Lastly, Mr. Bhushan, learned Senior Advocate contended that since a sum of Rs.8.00 Lakh stands paid to the complainant, prayer made in the instant petition for quashing of FIR, deserves to be accepted.

6. Mr. Dinesh Thakur, learned Additional Advocate General, while fairly acknowledging the factum with regard to receipt of a sum of Rs.8.00 Lakh having been paid to the complainant pursuant to compromise arrived inter se her (complainant) and Mustafa, contended that there is ample evidence on record to suggest that aforesaid amount was deposited in the account of Mustafa on the askance of present petitioner. However, Mr. Thakur, learned Additional Advocate General was unable to point out any material available on record suggestive of the fact that, at any point in time, complainant-Sunita Thakur had any conversation or contact with Faisel Babu (petitioner), who allegedly got a sum of Rs.6.00 Lakh deposited in the account of Mustafa.

7. I have heard the learned counsel for the parties and gone through the record carefully.

8. Having heard the learned counsel representing the parties and perused record, this court finds that there is no direct evidence adduced on record by the investigating agency to demonstrate that a sum of Rs.6.00 Lakh was deposited into the account of Mustafa at Kerala on the askance of present petitioner, rather, Mustafa, in his statement has stated that a sum of Rs.6.00 Lakh was deposited in his account for the construction of house of one

co-accused, Jafar Shah. If statement of Mustafa made during his judicial interrogation, is read in its entirety, it suggests that he disclosed that his account number was given to the present petitioner by Jafar Shah, who resides in Dubai. Allegedly, on 12.3.2017, a sum of Rs.6.00 Lakh was deposited into the account of Mustafa, but definitely, there is no evidence available on record to connect the present petitioner with the aforesaid transaction. If, for the sake of arguments, it is presumed to be correct that account number of Mustafa was given to the complainant on the askance of co-accused Jafar Shah, even then this court is unable to find any document available on record suggestive of the fact that such account number was ever provided to the complainant Sunita Thakur by Faisel Babu, rather, it is an admitted case of the investigating agency that Rs.6.00 Lakh came to be deposited into the account of Mustafa on the askance of co-accused Alisha and Gulshan Khan.

9. At this stage, it may be noticed that in the proceedings having been filed by Mustafa i.e. CrMMO No. 95 of 2018, this court had an occasion to peruse compromise/settlement arrived inter se complainant-Sunita Thakur and Mustafa, wherein factum with regard to receipt of Rs.8.00 Lakh in lieu of Rs.6.00 Lakh stood recorded. On 20.3.2018, respondent No.2-Sunita Thakur stated on oath before this Court that she, of her own volition and without there being any external pressure, has entered into compromise with the person namely Mohammad Mustafa son of Shri Mohammad, through his next friend/ brother-in-law. She categorically stated before this court in those proceedings that she has received a sum of Rs.8.00 Lakh towards full and final settlement and has no objection in case, FIR No. 210/2017 dated 22.9.2017 lodged at Police Station Sadar, Bilaspur, Himachal Pradesh, at her instance, is quashed and set aside.

10. Mr. Sanjeev Bhushan, learned Senior Advocate, while inviting attention of this Court to the agreement/ compromise arrived inter se parties as well as judgment passed by this court in CrMMO No. 95 of 2018, prayed that since nothing concrete has emerged against the petitioner, FIR as detailed herein above, may be quashed and set aside alongwith consequential proceedings pending before the Judicial Magistrate 1st Class, Bilaspur.

11. Since the instant petition has been filed under Section 482 Cr.P.C, this Court deems it fit to consider the same in light of the judgment passed by

Honâ??ble Apex Court in Narinder Singh and others versus State of Punjab and another (2014)6 SCC 466, whereby the 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 to 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 and 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:-

â??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 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 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??.

12. 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.

13. 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 Singhâ??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 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 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

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??

14. Recently the 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 who was following the command of her husband 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:

... 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!

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!

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??

15. In the case at hand also, the offence alleged against the accused is under Ss.420 and 120B IPC, which 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 thereto, especially keeping in view the fact that the complainant has compromised the matter with

the accused, in which case, the possibility of conviction is remote and no fruitful purpose would be served in continuing with the criminal proceedings.

16. Consequently, in view of the aforesaid discussion as well as law laid down by the Honâ??ble Apex Court (supra), of FIR No. 210/17 dated

22.9.2017, under Ss. 420 and 120B IPC, registered at Police Station Sadar, District Bilaspur, Himachal Pradesh in its totality alongwith consequential

proceedings pending in the court of Chief Judicial Magistrate, Bilaspur, Himachal Pradesh and the petitioner-accused is acquitted of the charges

framed against him. Bail bonds, if any, furnished by the petitioner are discharged.

17. The petition is disposed of in the aforesaid terms, alongwith all pending applications. Passport of the petitioner be released forthwith.

CrMP No. 1384 of 2018

18. Infructuous. Copy dasti.