

(2023) 05 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 426 Of 2017

Gulshan Begum And Others

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 17-05-2023

Acts Referred:

Code Of Criminal Procedure, 1989 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 323, 325, 327, 354, 379, 447, 504
Code Of Criminal Procedure, 1973 — Section 202, 320, 482
Indian Penal Code, 1860 — Section 307

Citation : (2023) 05 J&K CK 0018

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Surinder Kour, Mical Dogra, Eishan Dadhichi, Irfan Khan

Final Decision : Allowed

Judgement

M A Chowdhary, J

1) In this petition filed under Section 561-A of the Code of Criminal Procedure, the petitioners seek quashment of FIR No.102/2017 registered at Police Station, Banihal for the commission of offences punishable under Sections 354, 504 and 327 RPC, as well as, order dated 04.07.2017 passed by the learned Judicial Magistrate 1st Class (Munsiff), Banihal for registration of the FIR.

2) Briefly stated, the case of the prosecution is that on 10.06.2017, respondent No.2 had gone to her land bearing Khasra No.1189/1820 situated in Domaala Nowgam, Chamalwas. The petitioners, who were already there hiding themselves, started using abusive and bad language against respondent No.2. Petitioner No.2 grabbed respondent No.2 from breasts and other petitioner No.3 to 5 caught respondent No.2 from hair and clothes and petitioner No. 6 and 7 started beating her with fists and kicks. When respondent No.2 raised her voice by screaming loudly, some locals rushed to rescue her and on seeing the locals

approaching the spot, petitioners fled away from the spot. On an complaint moved by respondent No.2 before learned Judicial Magistrate, an enquiry under Section 202 Cr.P.C. was directed to be conducted by the concerned police. On receipt of the report, he ordered registration of FIR under Section 354/504/506/323 and, accordingly, FIR No.102/2017 came to be registered at Police Station, Banihal and investigation started.

3. While the investigation in the FIR was going on, petitioner challenged the registration of FIR and sought quashment of the same. It is stated that there is a land dispute between the petitioners and family of respondent No.2 who have been interfering into the land of the petitioners, as a result whereof, the petitioners lodged FIR No.165/2015 under Section 447, 379 RPC against husband of respondent No.2 and two brothers of husband of respondent No.2, namely, Shakeel Ahmed and Mohd. Yousuf. It is pleaded that the family members of respondent No.2 did not stop and continued to interfere in the possession of the petitioners over their proprietary land with a view to grab their land, which constrained the petitioners to lodge another FIR No.76/2017 under Section 325 RPC against respondent No.2 and her family members. The petitioners submit that in counter blast to the FIRs registered by them, respondent No.2 filed complaint before the Court of JMJC, Banihal. This Court, however, vide order dated 26.07.2017 had stayed the investigation in the FIR.

4. During the pendency of the petition, the parties, owing to the better sense that has prevailed inter-se, decided to resolve their disputes and have also entered into a compromise. The respondent No.2-complainant as also petitioner No.2 recorded their statements before the Registrar Judicial on 17.05.2023, wherein they have stated that they have amicably resolved all disputes and issues out of Court. Respondent No.2 in her statement has also stated that she has no grievance against the petitioners and does not want to pursue the case filed by her against the petitioner. She further stated that she has no objection in case FIR No.102/2017 registered at Police Station, Banihal is quashed.

5. I have heard learned counsel for the parties and perused the material on record.

6. In the backdrop of the compromise arrived at between the parties, the question arises as to whether this Court has power to quash the proceedings, particularly when some of the offences alleged to have been committed are non-compoundable in nature. The Supreme Court in the case of *Gian Singh. v. State of Punjab & another*, reported in (2012) 10 SCC 303, while considering this aspect, has observed as under:

"57. 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.."

7. Similarly, the Supreme Court in the case titled *Narinder Singh & Ors. Vs. State of Punjab & anr*, reported in (2014) 6 SCC 466, has laid down guidelines for quashing of criminal proceedings. The guidelines are reproduced as under:

"31. 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:

(I) 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.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives. (III) 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.

(IV) 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.

(V) 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.

(VI) 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 c/w CRM(M) No.614/2021 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. (VII) 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."

8. From a perusal of the aforesaid observations of the Supreme Court, it is clear that in the cases or disputes which have predominantly civil flavour and where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court is well within its jurisdiction to quash the criminal proceedings if it is known that because of the compromise arrived at between the parties, there is remote possibility of securing conviction of the accused. In fact, in such cases, the Supreme Court has clearly observed that it would amount to extreme injustice if despite settlement having been arrived at between the parties, the criminal proceedings are allowed to continue.

9. Adverting to the facts of the instant case, it is clear that the parties to the dispute, i.e., petitioners and respondent No.2 have entered into a compromise, whereby respondent No.2 has decided not to pursue prosecution in the impugned FIR against the petitioners. Therefore, once the rival groups have arrived at a settlement as regards the basis of the dispute, allowing the prosecutions to continue merely because some of the offences alleged against the accused are non-compoundable in nature would amount to great injustice to both the parties

and, in fact, it will amount to squander the fruits of compromise that has been arrived at between the parties, who happen to be relatives and want to live peacefully. The continuance of criminal proceedings against the petitioners, in these circumstances, will be nothing but an abuse of process of law.

10. In view of the aforesaid discussion, this petition is allowed. As a result, FIR No.102/2017 registered at Police Station, Banihal for commission of offences punishable under Sections 354, 504, 506, 327 RPC as well as order dated 04.07.2017 passed by the learned Judicial Magistrate (Munsiff), Banihal for registration of the FIR is quashed.