

(2021) 08 SHI CK 0130

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No.101 Of 2021

Jia Lal

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 12-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 320, 437, 482
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 279, 307, 323, 337, 338,
420, 452, 467, 468, 471, 506

Citation : (2021) 08 SHI CK 0130

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sanjeev Kumar Suri, Sudhir Bhatnagar, R.P. Singh, Kamal Sharma,
Narender Thakur, Amit Jamwal

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. By way of instant petition filed under Section 482 of the Code of Criminal Procedure, prayer has been made on behalf of the petitioner for quashing

of FIR No 8 of 2021, dated 3.2.2021, under Sections 279, 337 and 338 of IPC, registered at police Station Kandaghat, District Solan, Himachal

Pradesh as well as consequent proceedings, if any, pending adjudication in the competent Court of law, on the basis of the compromise arrived inter se

parties (Annexure P-2).

2. Averments contained in the petition, which is duly supported by an affidavit, reveal that FIR, sought to be quashed in the instant proceedings, came

to be lodged at the behest of respondent No.4/complainant (hereinafter referred to as the complainant), who alleged that on 3.2.2021, while he

alongwith other family members was going in his taxi No. HP-01-S-1757 from Narkanda to Dharampur, vehicle bearing registration No.CH-01AQ-

2438 being driven by the petitioner came from opposite side and collided with his vehicle, as consequences of which, all the occupants of the vehicle

suffered injuries. On the basis of aforesaid complaint made by respondent No.4/ complainant, FIR, as detailed hereinabove, came to be lodged against

the petitioner, but before same could be taken to its logical end, petitioner entered into the compromise with respondents No.4 to 9, who allegedly

suffered injuries in the accident, whereby they both have resolved to settle their dispute amicably inter se and as such, petitioner has approached

this Court in the instant proceedings, praying therein for quashment of FIR as well as consequent proceedings, if any, pending in the competent Court

of law.

3. Respondents No.1 to 3 have filed reply, but there is no mention, if any, with regard to compromise arrived inter se parties. Mr. Amit Jamwal,

Advocate has put in appearance on behalf of respondents No.4 to 9, who are otherwise present in Court.

4. Respondents No. 4 to 8 state on oath before this Court that they of their own volition and without there being any external pressure have entered

into the compromise with the petitioner, whereby both the parties have resolved to settle their dispute amicably inter se and as such, they shall

have no objection in case prayer made in the instant petition for quashment of FIR as well as consequent proceedings, if any, pending in the competent

Court of law is accepted. They state that FIR sought to be quashed in the instant proceedings, is result of misunderstanding and since they have been

duly compensated, they do not wish to prosecute the case further and shall have no objection in case the petitioner is acquitted of the charges framed

against him. Their statements are taken on record.

5. Mr. Narender Thakur, learned Deputy Advocate General after having heard the aforesaid statements made by respondents No. 4 to 8 fairly states

that no fruitful purpose would be served in case FIR as well as consequent proceedings sought to be quashed are allowed to sustain. He further states

that otherwise also, chances of conviction of petitioner/accused are very remote and bleak in view of the statements made by respondents No.4 to 8

before this Court and as such, respondent-State shall have no objection in case

the prayer made in the petitions is allowed.

6. This Court, after having carefully perused the compromise, which has been duly effected between the parties, sees substantial force in the prayer

having been made by the learned counsel for the petitioners that offences in the instant case can be ordered to be compounded.

7. Since the petition has been filed under Section 482 Cr.P.C, this Court deems it fit to consider the present petition 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 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 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 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 pre - dominantly 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??.

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's case, the Hon'ble Apex Court has held

that while exercising inherent power 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 Hon'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:-

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 Judges' 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 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.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 Singh'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:

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:

“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!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 inherent and 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.

10. The Honâ??ble Apex Court in (2019) 5 SCC 688, titled as State of Madhya Pradesh vs. Laxmi Narayan , has held as under:-

â?? 15 . Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1 That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section

320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial

transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like

murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3 Similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences

committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the

offender;

15.4 Offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be

treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC

and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the

ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because

there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to

whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to

framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such

injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be

permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise

is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this

Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5 While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/ compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

11. It is quite apparent from the aforesaid exposition of law that High Court has inherent power to quash criminal proceedings even in those cases

which are not compoundable, but such power is to be exercised sparingly and with great caution. In the judgments, referred hereinabove, Honâ??ble

Apex Court has categorically held that Court while exercising inherent power under Section 482 Cr.P.C. must have due regard to the nature and

gravity of offence sought to be compounded. Honâ??ble Apex Court has though held that heinous and serious offences of mental depravity, murder,

rape, dacoity etc. cannot appropriately be quashed though the victim or the family of the victim have settled the dispute, but it has also observed that

while exercising its powers, 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.

Honâ??ble Apex Court has further held that Court while exercising power under Section 482 Cr.P.C can also be swayed by the fact that settlement

between the parties is going to result in harmony between them which may improve their future relationship. Honâ??ble Apex Court in its judgment

rendered in State of Tamil Nadu supra, has reiterated that 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 and has held that the power to quash under Section 482 is attracted even if the offence is non-

compoundable. In the aforesaid judgment Honâ??ble Apex Court has held that while forming an opinion whether a criminal proceedings 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.

12. In the case at hand also, offences alleged to have been committed by the petitioner do not involve offences of moral turpitude or any grave/heinous

crime, rather same are petty offences, as such, this Court deems it appropriate to quash the FIR as well as consequential proceedings thereto,

especially keeping in view the fact that the petitioner and respondents No.4 to 9 have compromised the matter inter se, in which case, possibility

of conviction is remote and no fruitful purpose would be served in continuing with the criminal proceedings.

13. Since the matter stands compromised between the parties and respondent Nos.4 to 9 are no more interested in pursuing the criminal proceedings

against the petitioner, no fruitful purpose would be served in case proceedings initiated at the behest of respondent No.4/complainant are allowed to

continue, as such, prayer made in the petition at hand can be accepted.

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

parties that the matter has been compromised, and keeping in mind the well settled proposition of law as well as the compromise being genuine, this

Court has no inhibition in accepting the compromise and quashing the FIR as well as consequent proceedings pending in the competent Court of law.

15. Accordingly, in view of the detailed discussion made hereinabove as well as law laid down by the Honâ??ble Apex Court, FIR No 8 of 2021,

dated 3.2.2021 under Sections 279,337 and 338 of IPC, registered at police Station Kandaghat, District Solan, Himachal Pradesh as well as

consequent proceedings, if any, pending adjudication in the competent Court of law, are quashed and set-aside.

16. The present petition is allowed in the aforesaid terms. Pending application(s), if any, also stands disposed of.