

(2020) 06 GUJ CK 0008

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6210 Of 2020

Krupalsinh Kalusinh Jhala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 302, 302(1), 302(2), 482
Indian Penal Code, 1860 — Section 143, 147, 149, 307, 323, 504, 506(2)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 3(2)(va)

Citation : (2020) 06 GUJ CK 0008

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Tejas M Barot, Chintan Dave, Sankul K Kabra

Final Decision : Allowed

Judgement

Dr. Ashok Kumar C. Joshi, J

1. Heard learned Advocate Mr. Tejas M. Barot for the Applicants and learned Advocate Mr. Sankul K. Kabra for Respondent No.2 / Original

Informant through video conference.

2. Learned APP Mr. Chintan Dave is present for the Respondent State of Gujarat.

3. Rule returnable forthwith. Learned APP waives service of notice of Rule for and on behalf of the Respondent No.1 State of Gujarat and Mr.

Sankul K. Kabra appears and waives service of notice of Rule on behalf of Respondent No.2 / Original Informant.

4. By this Application, the Applicants original accused persons seek to invoke the inherent powers of this Court under Section 482 of the Code of

Criminal Procedure, 1973, praying for quashing of the First Information Report

vide I-C.R. No.11209041200225 of 2020 registered with the Prantij

Police Station, District: Sabarkantha for the offences punishable under Sections 143, 147, 149, 323, 504 and 506(2) of the Indian Penal Code and

Section 3(1)(r)(s) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The brief facts of the case as per the FIR are that the applicant No.1's father "Kalusinh Balusinh Jhala is the owner of field known as

Dhadiyavala Farm. On 12.04.2020, in the morning at about 10.00 am the mother of the applicant no.1 and his brother- Kishansinh had gone to their

field for cattle grazing. At that time applicant no.1's brother Kishansinh was sitting under a mango tree. At that point of time, the respondent No.2

- original complainant forcefully entered in the field of the applicant no.1's father where his mother and brother were present. The respondent

no.2, after forcefully entering the field, started plucking the mangoes and when Kishansinh, who is not able to speak, tried to stop with gestures, the

respondent No.2 rained kick and fist blows and also inflicted injury with stick. Kishansinh complained of the same to his mother Kumanba and when

Kumanba intervened, the respondent No.2 administered threat to Kishansinh and at that point of time other neighbors- Ramjibhai Lalabhai Desai and

Ajmalsinh Takhatsinh Rathod also came there. Thereafter, respondent No.2 left the place. Kishansinh received the injuries with stick and kick blows

on his back and therefore, was taken to the government hospital at Prantij. Further, after the said incident in the village, other village people including

the members of community of the respondent No.2 intervene and restrain the applicant No.1's mother from filing the FIR against the respondent

No.2 for the offences committed by him. It is further alleged that on the day of the incident in the morning at about 11.00 am the respondent No.2 on

his way back to home was intercepted by Krupalsinh Kalusinh Jhala "the applicant No.1 herein, co-accused- Prithvisinh Jhala and Pravinsinh

Vishusinh Jhala; that the applicant No.2 herein intercepted the respondent No.2 and asked as to why he was roaming around in shorts and the reply of

the respondent No.2 infuriated the said persons. Further, when the accused persons stated abusing the respondent No.2 and used racial slur, the

respondent No.2 tried to stop them and at that point of time, Krupalsinh, Prithvisinh and unnamed young boy gave kick and fist blows, pushed into

ground and Krupalsinh and unnamed boy inflicted injury with stone at the back of head of the respondent No.2 and at that point of time, the applicant

Nos. 3 and 4 came there and instigated the other accused persons it is alleged that the respondent No.2 was taken to Talod Civil hospital where he

took treatment and thereafter was discharged. Thus, on the aforesaid facts the FIR in question came to be lodged against the applicants.

6. Today, when the matter is taken up for hearing, it is jointly submitted by the learned advocates appearing for the respective parties that the dispute

has been amicably settled between the parties and the respondent No.2-original complainant has no objection if the first information report in question

is quashed.

7. Learned Advocate Mr. Kabra for Respondent No.2-original complainant has submitted that the respondent no.2 viz. Alpeshbhai Ishwarbhai Parmar

has filed an affidavit dated 30.5.2020 which is on record. The same reads as under:

â??I, Alpeshbhai Ishwarbhai Parmar, aged 28 years, occu: Service, residing at Village â?? Bai Ni Muvadi, Parmar Faliyu, Taluka â?? Prantij, District

â?? Sabarkantha, Respondent No.2 herein do hereby on solemn affirmation state as under:

1. xxx

2. It is stated that after the said incident and filing of the said FIR, persons known to both the sides intervened and due to such intervention, the

petitioners and informant-side have arrived at tan amicable settlement and the disputes, differences and issues between both the parties are now

resolved. In that view of the matter, on account of the settlement arrived at between the petitioners and the informant-side have arrived at an

amicable settlement and the disputes, differences and issues between both the parties are now resolved. In that view of the matter, on account of the

settlement arrived at between the petitioners and the informant-side, with the intervention of the above referred person, there remains no grievance or

differences between the informant-side and the petitioners and the same have now been resolved. It is stated that the parties have settled the

disputes/differences between them considering the well being ad reputation of both the parties. That both the sides are from the same place and they

have decided to live with peace and harmony and the dispute between them has

been amicably settled.

3. In view of the settlement, I, the informant of FIR No.11209041200225 of 2020 registered with Prantij Police Station, do hereby state that I do not

intend to prosecute the petitioners in connection with the above case, in view of settlement having been arrived at between both the parties. In view of

the above, the Honâ??ble Court is humbly requested to pass appropriate order in the matter.â??

8. Learned APP Mr. Chitan Dave submitted that undoubtedly this is a case wherein the applicants are charged for the offences under the IPC and

the Atrocity Act. However, he has conceded that the matter is settled between the present applicants and original complainant, which can be reflected

from the affidavit filed by the original complainant-respondent No.2 and in the circumstance, this Court may pass the appropriate order.

9. Having considered the submissions made on behalf of both the sides and the fact that it is a private dispute and the parties have arrived at an

amicable settlement, especially when the respondent No. 2 â?" original complainant has chosen to put an end to the matter, no cause survives and,

therefore, it would be desirable to quash the first information report in view of the decision of the Honâ??ble Supreme Court in the case of Gian

Singh v. State of Punjab and another 1 as well as in the case of Narinder Singh v. State of Punjab [2014 (0) AIJEL-SC 55150,]whereby it is held that

the Courts should encourage genuine settlements and section 482 of the Code of Criminal Procedure, 1973, enables the High Court to pass such

orders. It would be beneficial to reproduce the relevant observations and findings of the Honâ??ble Supreme Court in the case of Narinder Singh

(supra), which read as under:

â??11. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences

which are uncompoundable has been recognized. The only difference is that under Section 320(1) of the Code, no permission is required from the

Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding

under Section 320(1) of the Code is permissible only in minor offences or in nonserious offences. Likewise, when the parties reach settlement in

respect of offences enumerated in Section 320(2) of the Code, compounding is

permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in *B. S. Joshi v. State of Haryana* (2003) 4 SCC 675 : (AIR 2003 SC 1386) which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.

12. At the same time, one has to keep in mind the subtle distinction between the power of compounding of offences given to Court under Section 320 of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code. Once, it is found that compounding is permissible only if a particular offence is covered by the provisions of Section 320 of the Code and the Court in such cases is guided solitarily and squarely by the compromise between the parties, insofar as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment. Such a distinction is lucidly explained by a three Judge Bench of this Court in *Gian Singh v.*

State of Punjab and Anr. (2012) 10 SCC 303 : (2012 AIR SCW 5333.) Justice Lodha, speaking for the Court, explained the difference between the two provisions in the following manner:

Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or

dismissal of indictment.

xxx xxx

B. S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or

complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under

Section 482. Can it be said that by quashing criminal proceedings in B. S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded

the noncompoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320

and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different

although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.

13. Apart from narrating the interplay of Section 320 and Section 482 of the Code in the manner aforesaid, the Court also described the extent of

power under Section 482 of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the

offences are not compoundable. In the first instance it was emphasized that the power under Section 482 of the Code is not to be resorted to, if there

is specific provision in the Code for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised

as against the express bar of law engrafted in any other provision of the Code. The Court also highlighted that in different situations, the inherent

power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power

under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua

non.

14. As to under what circumstances the criminal proceedings in a noncompoundable case be quashed when there is a settlement between the parties,

the Court provided the following guidelines:

Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled

although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the wellbeing of the society and it is not safe to leave the crimedoer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hardandfast category can be prescribed.

Thereafter, the Court summed up the legal position in the following words:

â??The position that emerges from the above discussion can be summarized 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 plentitude with no statutory limitation but it has to be exercised in accord with the guidelines

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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

15. The Court was categorical that in respect of serious offences or other offences of mental depravity or offence of merely dacoity under special statute, like the Prevention of Corruption Act or the offences committed by public servant while working in that capacity. The mere settlement between the parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court.

16. The question is as to whether offence under Section 307, IPC falls within the aforesaid parameters. First limb of this question is to reflect on the nature of the offence. The charge against the accused in such cases is that he had attempted to take the life of another person (victim). On this touchstone, should we treat it a crime of serious nature so as to fall in the category of heinous crime, is the poser.

17. Finding an answer to this question becomes imperative as the philosophy and jurisprudence of sentencing is based thereupon. If it is heinous crime of serious nature then it has to be treated as a crime against the society and not against the individual alone. Then it becomes the solemn duty of the

State to punish the crime doer. Even if there is a settlement/compromise between the perpetrator of crime and the victim, that is of no consequence.

The Law prohibits certain acts and/or conduct and treats them as offences. Any person committing those acts is subject to penal consequences which

may be of various kind. Mostly, punishment provided for committing offences is either imprisonment or monetary fine or both. Imprisonment can be

rigorous or simple in nature. Why those persons who commit offences are subjected to such penal consequences? There are many philosophies behind

such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific

deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

Whereas in various countries, sentencing guidelines are provided, statutorily or otherwise, which may guide Judges for awarding specific sentence, in

India we do not have any such sentencing policy till date. The prevalence of such guidelines may not only aim at achieving consistencies in awarding

sentences in different cases, such guidelines normally prescribe the sentencing policy as well namely whether the purpose of awarding punishment in a

particular case is more of a deterrence or retribution or rehabilitation etc.

18. In the absence of such guidelines in India, Courts go by their own perception about the philosophy behind the prescription of certain specified penal

consequences for particular nature of crime. For some deterrence and/or vengeance becomes more important whereas another Judge may be more

influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of

the Court in awarding a particular sentence. However, that may be question of quantum.â??

10. In the light of the aforementioned observations of the Honâ??ble Supreme Court in the decisions in the cases of Narinder Singh (supra) and Gian

Singh (supra), this Court is of the opinion 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.

11. For the foregoing reasons and in view of the decisions of the Honâ??ble Supreme Court in the case of Narinder Singh (supra) and Gian Singh

(supra), the present application succeeds and the same is, accordingly, allowed in view of an amicable settlement arrived at by and between the

parties. Further, when settlement is arrived and if the trial is proceeded, it would be futile exercise and further it would be also abuse of process of law

when the amicable settlement is arrived between the parties. The first information report being I-C.R. No.11209041200225 of 2020 registered with the

Prantij Police Station, District: Sabarkantha for the offences punishable under Sections 143, 147, 149, 323, 504 and 506(2) of the Indian Penal Code

and Section 3(1)(r)(s) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 and all the proceedings

emanating therefrom, are quashed and set aside.

12. Rule is made absolute qua the applicants herein accordingly. Direct service is permitted by e-mail / fax.