

(2021) 03 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CR.MMO NO. 376 Of 2020

Monika Kumari

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 320, 437, 482
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 307, 323, 420, 452, 467,
468, 471, 504, 506
Information Technology Act, 2000 — Section 66(C)

Citation : (2021) 03 SHI CK 0002

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : T.K. Verma, Sudhir Bhatnagar, Arvind Sharma, Kunal Thakur,
Amandeep Singh

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. By way of instant petition filed under S.482 CrPC, prayer has been made on behalf of the petitioner/complainant (hereinafter, 'complainant')

for quashing of FIR No. 144, dated 10.7.2019, under Ss. 504 and 506 IPC and S. 66(C) of the I.T. Act, registered at Police Station Sadar, Shimla,

District Shimla, Himachal Pradesh against respondent No.2/accused, alongwith consequent proceedings, if any, on the basis of compromise arrived

inter se parties Annexure P-2).

2. Precisely, the facts of the case are that the complainant-Monika Kumar lodged the FIR sought to be quashed in the instant proceedings alleging

therein that the accused Bhisham Singh, with whom she had intimate relations, threatened her to upload her personal pictures on the Facebook.

Complainant also alleged that the accused besides extending her threats also hurled abuses, as such, appropriate action in accordance with may be taken against the accused. Police, on the basis of aforesaid complaint made by the complainant, though registered the FIR, but before the investigation could be completed, both, complainant and accused entered into compromise, as such, they have approached this Court in the instant proceedings, for quashing of the FIR in question as well as consequent proceedings, if any, in the competent Court of law.

3. This Court, while issuing notice in the instant petition, deemed it necessary to cause presence of both, complainant and the accused, so that correctness and genuineness of the compromise placed on record could be ascertained. Accordingly, in terms of order dated 23.2.2021, both the parties have come present. Accused, Bhisham is represented by Mr. Amandeep Singh, Advocate, who has filed Power of Attorney on his behalf.

4. Complainant, Monika Kumari, on oath states before this Court that she, of her own volition and without there being any external pressure has entered into compromise with the accused. She stated that the FIR sought to be quashed in the instant proceedings is outcome of misunderstanding inter se her and the accused. She further states that since both the parties have resolved to settle the dispute amicable inter se them, she has no objection in case FIR sought to be quashed in the instant proceedings, is quashed and set aside alongwith consequent proceedings, if any and accused is acquitted. She has identified her signatures on the compromise. Her statement is taken on record.

5. Mr. Kunal Thakur, learned Deputy Advocate General having heard statement made by the complainant, fairly states that since the complainant and the accused have entered into compromise, no fruitful purpose would be served in case criminal proceedings against the accused are allowed to continue. He further states that otherwise also chances of conviction in the present case are bleak and remote on account of statement given by the complainant, and as such, respondent-State shall have no objection in case prayer made in the present petition is allowed.

6. The question which now needs consideration is whether FIR in question can be ordered to be quashed when Hon'ble Apex Court in *Narinder Singh and others versus State of Punjab and another* (2014)6 SCC 466 has specifically held that power under S. 482 CrPC 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.

7. At this stage, it would be relevant take note of the judgment passed by Hon'ble Apex Court in Narinder Singh (supra), 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 to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of

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

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

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

vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding

factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of

conviction are remote and bleak. In the former case it can refuse to accept the

settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come 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. 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.

9. 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.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??

10. 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??

11. In the case at hand also, offences alleged to have been committed by the accused 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 complainant and accused have compromised the matter inter se them, in which case, possibility of

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

12. Since the matter stands compromised between the parties and the complainant is no more interested in pursuing the criminal proceedings against

the accused, no fruitful purpose would be served in case proceedings initiated at the behest of the complainant are allowed to continue, as such, prayer

made in the petition at hand can be accepted.

13. Consequently, in view of the aforesaid discussion as well as law laid down by the Honâ??ble Apex Court (supra), FIR No. 144, dated 10.7.2019,

under Ss. 504 and 506 IPC and S. 66(C) of the I.T. Act, registered at Police Station Sadar, Shimla, District Shimla, Himachal Pradesh against

respondent No.2/accused, alongwith consequent proceedings, if any, are quashed and set aside. Accused (respondent No.2) is acquitted of the

charges framed against him in the said FIR/proceedings.

14. The petition stands disposed of in the aforesaid terms, alongwith all pending applications.