

(2018) 06 SHI CK 0037
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 95 of 2018

Mustfa

APPELLANT

Vs

State of Himachal Pradesh And Anr.

RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Code of Criminal Procedure 1973 — Section 156(3), 320, 482
Indian Penal Code 1860 — Section 120B, 406, 420
Constitution of India, 1950 — Article 226

Citation : (2018) 4 BC 4 : (2018) 3 DCR 429

Hon'ble Judges : SANDEEP SHARMA, J

Bench : Single Bench

Advocate : Tara Singh Chauhan, Dinesh Thakur, Amit Kumar Dhumal, Amrinder Singh Rana

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J.

1. By way of instant petition filed under Section 482 Cr.PC, prayer has been made on behalf of the petitioner for quashing of FIR No. 210 of 2017

dated 22.9.2017, registered at PS Sadar, District Bilaspur, HP, under Sections 420, 406 and 120-B of IPC and consequent criminal proceedings

pending in the Court of learned Chief Judicial Magistrate, Bilaspur, H.P., qua the petitioner.

2. Necessary, facts as emerge from the record are that respondent No.2 filed a complaint before the learned JMFC Bilaspur, under Section 156 (3)

Cr.PC., alleging therein that persons namely Alisha Parvez and Gulshan Khan, fraudulently made her to deposit a sum of Rs. 6 lac, in the bank

account of present petitioner on the pretext of getting the work Visa in favour of her son.

Respondent No. 2 also alleged that persons named herein above, assured her that her son would be provided with work Visa for Japan, however, fact

remains that neither work Visa was provided to the son of the respondent/complainant nor money was refunded and as such, respondent was

compelled to file aforesaid complaint before the learned JMIC, Bilaspur. Learned JMIC Bilaspur, directed the SHO Bilaspur, to lodge FIR against

persons named herein above. During investigation, police found the involvement of the present petitioner in the crime in as much as an amount of Rs.

6 lac was found to be deposited in his saving bank account at Kerala. After registration of case against the present petitioner and other accused,

present petitioner approached this Court by way of bail petition bearing No. Cr.MP(M) No. 169 of 2018 and this Court taking note of the fact that an

amount of Rs. 8,00,000/-stands paid back to the complainant-respondent No.2, enlarged the petitioner on the bail.

3. By way of present petition, petitioner while placing on record agreement/compromise arrived at inter-se him and the complainant Smt. Sunita, prays

for quashing of FIR. Though perusal of compromise/settlement arrived inter-se parties (page-30) clearly suggests that respondent-complainant

received an amount of Rs. 8 lac instead of Rs. 6 lac allegedly deposited by her in the saving bank account of the petitioner, however, this Court with a

view to ascertain the correctness and genuineness of the aforesaid compromise placed on record, also recorded statement of the complainant-

respondent, who had come present in the Court on 20.3.2018. Mr. Amrinder Singh Rana, Advocate, represented the complainant Sunita in the Court

on 20.3.2018. Respondent No.2 categorically stated on oath before this Court that she with her own volition and without there being any external

pressure has entered into compromise with the petitioner namely Mohammad Mushtafa, S/o Sh. Mohammad, R/o Edasseri House, Tehsil Tirur,

District Malappuram, Kerala, through his next friend/brother-in-law. She also stated that she has received a sum of Rs 8,00,000/- towards full and final

settlement and has no objection in case FIR No 210 of 2017 dated 22.09, 2017, registered at PS Sadar, District Bilaspur, H.P. under Sections 420, 406

and 120-B of the IPC, is quashed and set-aside.

4. Mr. Tara Singh Chauhan, learned counsel representing the petitioner while referring to the agreement/compromise arrived inter-se parties and

statement made on oath by respondent No.2, states that FIR lodged at the behest of respondent No.2 deserves to be quashed as far as petitioner is concerned. He further states that since parties have entered into compromise and entire amount allegedly received by the petitioner stands refunded to the petitioner, no fruitful purpose would be served in case proceedings, if any, are allowed to continue, rather, it would be a sheer abuse of process of law. In support of his aforesaid contention, he placed reliance upon judgment passed by the Honâ??ble Apex Court in Narinder Singh and others versus State of Punjab and another (2014) 6 Supreme Court Cases 466.

5. Mr. Dinesh Thakur, learned Additional Advocate General, while fairly acknowledging the fact that amount of Rs. 8,00,000/- stands received by respondent No.2 (i.e complainant), towards full and final payment, opposes the prayer made in the application and contends that in case, FIR is quashed and set-aside, actual culprits who are sitting abroad, shall also be set free. He also submits that otherwise also, FIR cannot be quashed partly as is being prayed in the instant petition.

6. I have heard learned counsel for the parties as well as gone through the records of the case.

7. It is not in dispute, rather admitted fact that the petitioner has paid a sum of Rs. 8,00,000/- to the respondent-complainant instead of Rs. 6,00,000/- alleged to have been deposited by her in the saving bank account of present petitioner. It is also not in dispute that money in the case at hand was deposited by the respondent-complainant on the askance of other accused not the present petitioner, who resides in Kerala. As per complainant, co-accused Alisha Parvez and Gulshan Khan had persuaded her to deposit amount of Rs. 6,00,000/- on the pretext of arranging work Visa for her son.

Since respondent complainant has received the full amount and she has no objection in setting aside the FIR as well as consequent proceedings, if any, there appears to be very remote/bleak chance of conviction of the petitioner in case trial is allowed to proceed on the basis of FIR lodged at the behest of the respondent-complainant.

8. As far as argument advanced by learned Additional Advocate General that FIR cannot be quashed in part, Honâ??ble Apex Court in case bearing Criminal Appeal No. 670 of 2017 (@ Petition(s) for Special Leave to Appeal (Crl.) No. 1666 of 2017) titled Lovely Salhotra and Anr v. State NCT of

Delhi and Anr, decided on 10.4.2017, has categorically held that FIR can be quashed in part, if no offence is made out against the co-accused,

relevant para whereof , is being reproduced herein below:-

â??Leave granted.

We have heard the learned counsel appearing for the appellants and the learned counsel appearing for Respondent No.2 at length today. We have

seen the order so passed by the High Court of Delhi on 19th December, 2016 whereby it has rejected the application of the appellants-herein filed by

them under Criminal Writ Jurisdiction under Article 226 of the Constitution of India, for quashing the First Information Report No. 520/2015, Police

Station Mianwali Nagar, West Delhi registered under Sections 420/494/506 and 34 of the Indian Penal Code and further proceedings emanating

therefrom.

We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants -

herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants-

herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 â??herein only on the ground that the investigation against

co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4

and 6 prima facie.

Accordingly to us, the F.I.R. in question filed against the appellants-herein by Respondent No.2 is only an after-thought with the sole intention to

pressurize the appellants not to prosecute their Criminal Complaint filed by them under Section 138 of the Negotiable Instruments Act, 1881.

Accordingly, we find that the order so passed by the High Court is not sustainable in the eyes of law and deserves to be set-aside. Accordingly, we

set aside the said order of the High Court and quash the F.I.R. qua the appellants-herein. The appeal is allowed in the afore-stated terms.â??

9. The Honâ??ble Apex Court in case titled Narinder Singh and others versus State of Punjab and another (2014)6 Supreme Court Cases 466, 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 exercised sparingly and with great caution. Para Nos. 29 to 29.7 of the judgment are reproduced as under:-

â??29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

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

(i) ends of justice, or
(ii) to prevent abuse of the process of any Court. While exercising the power under Section 482 Cr.P.C the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are

not to be quashed merely on the basis of compromise between the victim and the offender.

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

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

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

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

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

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

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

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

conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later

case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this

stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may

improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where

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

10. 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 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:-

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 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 predominatingly 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??

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??

11. 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:

“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 systemâ?|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 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.

12. Accordingly, in view of 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 proceedings pending in the trial Court qua the petitioner.

13. Consequently, in view of the detailed discussion made herein above as well as law laid down by the Honâ??ble Apex Court, present petition is

allowed and FIR No. 210 of 2017 dated 22.9.2017, registered at PS Sadar, District Bilaspur, HP, under Sections 420, 406 and 120-B of IPC as well as

consequent criminal proceedings pending in the Court of learned Chief Judicial Magistrate, Bilaspur, H.P, are quashed and set-aside qua the present

petition, whereas respondent- State is at liberty to proceed against the other co-

accused named in the FIR and consequent proceedings pending in the competent court of law qua the other co-accused shall proceed in accordance with law. Accordingly, present petition is disposed of, so also pending applications, if any.