

(2016) 03 JH CK 0084
In the Jharkhand High Court
Case No : Cr.M.P. No. 1804 of 2015.

Niju Ansari and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 323, 341, 379

Citation : (2016) 2 ECRC 659

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : P.P.N. Roy, Sr. Advocate, for the Appellant; A.K. Pandey, APP and Jyoti Prasad Sinha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J. - In this application, the petitioners has prayed for quashing the order dated 26.08.2015, passed by learned Additional Sessions Judge, II, Lohardaga in S.T. No. 74 of 2009, whereby and where under the application filed by the petitioners for allowing the informant and the injured to be examined on recall on the point of compromise has been rejected.

2. An FIR was instituted by the opposite party no. 2, in which it was alleged that on refusal by the informant to sell his mobile to petitioner no. 1, he was assaulted. Subsequently, when it was informed to the family members of the informant, they had taken the informant to the house of petitioner no. 1 and in course of discussion, the accused persons had assaulted the informant with lathi, rod and butt of a revolver.

3. Based on the aforesaid allegations, Lohardaga P.S. Case No. 7 of 2009 was instituted for the offence punishable under sections 341, 323, 307, 379/34 of the Indian Penal Code. Charge-sheet was submitted by the police and after cognisance was taken, the case was committed to the Court of Sessions, where after explaining the charges to the accused persons, trial has proceeded and the

witnesses including the injured were examined.

4. Based on a purported compromise arrived at between the petitioners and the injured persons including the informant, an application was filed for recalling the injured persons for their examination on the point of compromise, which was dismissed by the learned Additional Sessions Judge-II, Lohardaga on 26.08.2015 and which is the subject matter of challenge in the present application.

5. Heard Mr. P.P.N. Roy, learned senior counsel for the petitioners and Mr. Jyoti Prasad Sinha, learned counsel for O.P. No. 2.

6. Mr. P.P.N. Roy, learned senior counsel for the petitioners, has submitted that a counter case was also instituted by the petitioners, in which pursuant to the compromise, the informant party has been acquitted. It has been submitted that FIR does not disclose any offence, which is made out under Section 307 of the Indian Penal Code and coupled with the medical report of the injured persons, which does not reveal any injury on the vital part of the body, the compromise which has been effected can be considered and the entire criminal proceedings deserved to be quashed. Learned senior counsel for the petitioners has referred to the case of Mulukuri Siva Prasad v. State of Andhra Pradesh, reported in 2001(3) Crimes 50(SC) and the case of Narinder Singh and Ors. v. State of Punjab and Another, reported in (2014) 6 SCC 466. Learned senior counsel thus submits that considering the ratio which has been laid down by the Hon'ble Supreme Court in the judgements under reference, the injured persons may be permitted to be examined on recall on the point of compromise.

7. Mr. Jyoti Prasad Sinha, learned counsel for O.P. No. 2, has admitted to the factum of compromise and has also submitted that he does not have any objection to the prayer made by the petitioners.

8. The only point for consideration in this application is whether in an offence under section 307 of the Indian Penal Code, the factum of compromise can be taken into consideration so as to permit the defence to recall and reexamine the injured witnesses. The FIR suggests that specific allegations have been levelled against the petitioners for committing assault upon the injured persons including the informant. The injury report, which has also been brought on record, reveals that the injured -opposite party no. 4 had sustained lacerated wounds on his mouth, which was opined to be grievous in nature. Chusu Singh was also found to have suffered a grievous injury on account of fracture of second and fourth rib on the right side of the chest. It thus appears from the injury report that the injured persons had suffered grievous injury on account of assault committed upon them by lathi, danda and iron rod. Apart from the injuries, which have been sustained by the opposite party nos. 2, 3 and 4, it further appears that after institution of the case, the trial proceeded and the application submitted by the petitioners were after the witnesses were examined including the injured witnesses and who had supported the case of the prosecution. In the case of Mulukuri Siva Prasad (supra), the Hon'ble Supreme Court on appeal had allowed

compounding an offence under section 307 of the Indian Penal Code on the ground that the accused was the son of the injured and the injured being his mother was being maintained by him properly. The circumstance of that case involving a mother and son had prompted the Hon''ble Supreme Court to have passed the order of compounding of offence under Section 307 of the Indian Penal Code. The factual matrix of the present case is substantially and materially different with the judgment referred to above and in such circumstances the petitioners cannot derive any benefit from the same.

9. In the case of Narinder Singh (supra), it has been held that a case under section 307 of IPC can be compounded if a settlement is arrived at between the parties and if the same shall result in harmony between them and improve their future relationship. However, a note of caution has been put, in which certain circumstances have been enumerated, wherein a case under section 307 in spite of a compromise being effected between both the parties cannot lead to compounding of the offences. Some of the conditions, which have been laid down by the Hon''ble Supreme Court, are being extracted hereunder:-

"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under Section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely, whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used, etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.

27. At this juncture, we would also like to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of the offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous paragraph. Likewise, when challan is submitted but the charge has not been

framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the IO under Section 173 CrPC is also placed before the Court it would become the bounden duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury, etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.

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 the 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.

29.5. 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."

10. The High Court is to take a considerate view in accepting the submission and quashing the proceedings instituted under section 307 of the Indian Penal Code if a settlement is arrived at immediately after the offence and when the matter is still pending.

11. As would appear from the impugned order dated 26.08.2015, the witnesses including the injured witnesses have been examined and they have supported the prosecution case and the case is at the stage of final arguments. In such circumstances, this Court cannot enter into the question of a settlement and quash the proceedings or permit the defence to recall the witnesses on the point of compromise as the same would be against the purport and principles laid down by the Hon"ble Supreme Court in the case of Narinder Singh (supra) and which is quoted here in below:-

"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".

12. Apart from the fact that the case is pending only for argument of the respective parties and since the witnesses have supported the prosecution case, it cannot at this stage be deduced that the chances of conviction of the accused persons are remote or bleak.

13. In view of the aforesaid preposition of law laid down by the Hon"ble Supreme Court in the case of Narinder Singh (supra), the question of compounding of the offence under section 307 of Cr.P.C. cannot be allowed and the injured witnesses cannot be permitted to be recalled and reexamined on the point of compromise as the facts of the case does not fulfil the settled principles of law and therefore the learned trial court did not commit any illegality or irregularity in dismissing the application filed by the petitioners.

14. As a result of what has been stated above, this application fails and the same is accordingly dismissed.