

(2020) 09 SHI CK 0175
In the High Court Of Himachal Pradesh
Case No : CR.MMO No.221 Of 2020

Nikhil Thakur And Anr

APPELLANT

Vs

State Of H.P And Anr

RESPONDENT

Date of Decision : 09-09-2020

Acts Referred:

Indian Penal Code, 1860 — Sections 120B, 147, 148, 149, 323, 307, 341, 342, 346, 354D, 366, 420, 452, 467, 468, 471, 506
Motor Vehicles Act, 1988 — Section 181, 341, 342, 346, 354D, 366
Code Of Criminal Procedure, 1973 — Section 173, 320, 437, 482

Citation : (2020) 09 SHI CK 0175

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Divya Raj Singh, Kunal Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. By way of instant petition, prayer has been made on behalf of the petitioner for quashing of FIR No. 107/18 dated 20.4.2018, under Sections 341, 342, 346, 366, 354-D of IPC and Section 181 of Motor Vehicle Act, registered with Police Station Nurpur, District Kangra, H.P, as well as consequent proceedings pending before the court below, on the basis of compromise/amicable settlement arrived inter-se parties.

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.2 namely Avdesh Sharma (hereinafter referred to as "the complainant"), who alleged that on 19.04.2018, at 5.10. PM, friend of his daughter, i.e. Sakita Kumari, informed him that petitioner No.1, Nikhil Thakur, has forcibly taken his daughter, i.e. petitioner No.2, Shruti Sharma, in a Maruti Car. Complainant further alleged that petitioner Nikhil Thakur forcibly wants to solemnize marriage with his daughter petitioner No.2,

Shruti Sharma and as such, appropriate action in accordance with law be taken against him.

After completion of investigation, police presented challan in the competent court of law, i.e. Additional Sessions Judge-I, Kangra at Dharamshala (Annexure P-2), but before same could be taken to its logical end, parties to the lis have resolved to settle their dispute amicably inter-se them by way of compromise placed on record (Annexure P-3).

3. On 22.7.2020, this Court while issuing notice to the parties deemed it necessary to cause presence of parties to the lis, especially, complainant Avdesh Sharma at whose behest FIR, sought to be quashed in the instant proceedings, came to be lodged, so that correctness and genuineness of the compromise placed on record is ascertained. However, having taken note of prevailing conditions on account of COVID-19, this Court instead of summoning the parties to the Court, directed learned Additional Sessions Judge-I, Kangra at Dharamshala, to record the statement of respondent No.2/complainant at Dharamshala and thereafter submit the report to this Court, enabling it to pass appropriate orders.

Besides above, this Court also directed learned Additional Advocate General to verify the factum with regard to compromise, if any, arrived at inter se the parties. Pursuant to order dated 22.7.2020, learned Additional Sessions Judge-I, Kangra at Dharamshala, has sent communication dated 17.8.2020, enclosing therewith statements of petitioner No.2, Shruti Sharma and respondent No.2/complainant Avdesh Sharma, which are taken on record.

Perusal of the statements dated 14.8.2020, made on oath by petitioner No.2, Shruti Sharma and respondent No.2/complainant Avdesh Sharma, clearly reveal that petitioner No.1, Nikhil Kumar against whom FIR and consequential proceedings, pending before the Competent Court of Law, sought to be quashed, came to be lodged at the behest of respondent No.2/complainant as petitioner No.1, Nikhil Kumar, has amicably solemnized the marriage with petitioner No.2, Shruti Sharma, i.e. daughter of respondent No.2/complainant.

4. Respondent No.2/complainant has categorically stated before the learned Additional Sessions Judge-I, Kangra at Dharamshala that he of his own volition and without there being any external pressure has entered into compromise with the petitioner-accused. He states that since both the parties have amicably resolved their dispute inter-se them by way of a compromise, which also bears his signatures, he shall have no objection, in case prayer made in the petition for quashing of FIR in question is accepted. Such statement made on oath is taken on record.

Besides above, petitioner No.2, Shruti Sharma, has also stated on oath before the learned Court below that she is happily residing with her husband, i.e. petitioner No.1, Nikhil Thakur and she has already sent the compromise, which has been filed before the Hon'ble High Court in the instant proceedings.

5. Mr. Kunal Thakur, learned Deputy Advocate General, having carefully perused the aforesaid statements made by petitioner No.2 as well as complainant/respondent No.2, states that in view of the amicable settlement arrived inter-se parties, no fruitful purpose would be served in case FIR as well as consequent proceedings pending before the court below are allowed to sustain. He further states that otherwise also, there are very remote/bleak chances of conviction of accused on account of statement given by the complainant before this Court and as such, State shall have no objection in case prayer made in the petition is allowed.

6. Since the petition has been filed under Section 482 Cr.PC, this Court deems it fit to consider the present petition in the light of the judgment passed by Hon'ble Apex Court in Narinder Singh and others versus State of Punjab and another (2014)6 Supreme Court Cases 466, whereby Hon'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, Hon'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:-

"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".

"32. We find from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compels us to take a different view.

33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute, etc. is not stated in detail. However, a very pertinent statement appears on record viz. "respectable persons have been trying for a compromise up till now, which could not be finalized." This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with police station Lopoke,

District Amritsar Rural be quashed. We order accordingly."

7. The Hon'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 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

"...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 the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." (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.

8. Recently Hon'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: 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.

9. 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, Hon'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. Hon'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. Hon'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. Hon'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 Hon'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.

10. 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, FIR No. 107/18 dated 20.4.2018, under Sections 341, 342, 346, 366, 354- D of IPC and Section 181 of Motor Vehicle Act, registered with Police Station Nurpur, District Kangra, , are ordered to be quashed and set-aside.

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