

(2018) 12 J&K CK 0055

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 267 Of 2012

Niva Sinha And Ors @APPELLANT@Hash State Of Jammu & Kashmir & Anr

Date of Decision : 21-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 307, 326
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 307, 337, 420, 506
Code Of Criminal Procedure, 1973 — Section 173, 320, 320(9), 482
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 J&K CK 0055

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Rupak Ratta, A. M. Malik, Ashfaq Ahmed Khan

Final Decision : Allowed

Judgement

1. Petitioners have filed present petition for quashing of FIR No.146/2004 under Section 420, 337, 109, 506 RPC as also Challan pending before the Court of learned CJM Doda arising out of afore said FIR No.146/2004, on the ground of compromise affected between the complainant and the petitioners.

2. From bare perusal of the petition, it is evident that there were various cases pending between the parties before different courts in India. Petitioners have attached a copy of petition filed before SDJM Patna wherein parties filed a compromise petition executed between accused persons namely Sunil Kumar (respondent No.2 herein), Sunita Kumari, Sudhir Kumar, Shobha Devi, Sharda Choudhary and all complainants namely Niva Sinha, Deo Chandra Prasad, Smt. Roopkala Devi, Pankaj Kumar (petitioner No.2 herein) and Paras Nath Pandey (petitioner No.3 herein). In the said petition, it has categorically been stated that they have mutually agreed to decide the dispute between them. Paragraph No.16 of the said petition reads as under:-

"That Sunil Kumar has instituted FIR in Doda P.S. Case No.146/04 pending before CJM, Doda. In this case Niva Sinha has preferred transfer petition in

Hon'ble Supreme Court vide Transfer Petition (Criminal) No.315/2009, which is pending. Parties have agreed that they will file joint petition along with this compromise petition in Hon'ble Supreme Court for taking all necessary steps in Doda PS Case No.146/04 pending before C.J.M, Doda for termination of the proceeding in favour of the accused persons resulting in their discharge/acquittal and then such order will be filed in said case in Hon'ble Supreme Court for dismissal of the transfer case."

3. Respondent No.2 has also filed objections wherein it has been stated that he has no objection in case this petition is allowed and FIR in question and all subsequent proceedings are quashed as parties have entered into compromise.

4. Even there are sworn affidavits of complainant and respondent No.2 on record, which authenticate the factum of compromise.

5. On 15.11.2010 Hon'ble Supreme Court in Transfer Petition (CRL) No.315 of 2009 filed by petitioners against respondent No.2 and another, it has been held that; learned counsel for the parties have compromised their disputes and the compromise deed has been placed on the file. In this view of the matter, the transfer petition is rendered infructuous and is disposed of accordingly.

6. Heard learned counsel for both sides and considered the facts and law on the subject.

6. A Coordinate Bench of this Court has already considered a similar issue in 561-A No.345/2017 vide order dated 09.06.2017 wherein the petition was allowed and the charge sheet and the proceedings against the petitioners therein were quashed. It is apt to reproduce operative part of the said order as under:

"Offence under Section 307 RPC is also the offence relating to use of weapons by the petitioners are non compoundable. However, it is stated that parties are next-door neighbours to each other. They have buried the hatchets and want to live as friendly neighbours. Learned counsel for the petitioners cites a judgment of the Supreme Court in the case of "Narinder Singh & ors. v. State of Punjab & anr." 2014(2) Crimes (SC) 67.

Parties having entered into a compromise, trial of the petitioners may not be fruitful. That apart, it would be in the better interest of both the parties in case they are given chance to materialise their intention to live as friendly neighbours. Allowing compensation would be profitable as compared to continuing with the trial.

Viewed thus, this petition is allowed the charge sheet and the proceedings against the petitioners (supra) are quashed."

7. In Yogendra Yadav & ors. Vs. State of Jharkhand & anr. reported in 2014 AIR (SC) 3055, the Hon'ble Supreme Court held has under:-

4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable.

Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab¹). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two 1 (2012) 10 SCC 303 4 Page 5 groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant-Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. Learned counsel for the parties have confirmed that the disputes between the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. State of Jharkhand has 6 Page 7 further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings.

7. In view of the compromise and in view of the legal position which we have discussed hereinabove, we set aside the impugned order dated 4/7/2012 and quash the proceedings in S.C.No.9/05 pending on the file of 2nd Additional Sessions Judge, Godda. The appeal is disposed of."

8. In case Narinder Singh and ors. Vs. State of Punjab & anr. reported in 2014 Cr.L.J. (SC) 2436, it is held as under:-

"26. The two rival parties have amicably settled the disputes between themselves and buried the hatchet. Not only this, they say that since they are neighbours,

they want to live like good neighbours and that was the reason for restoring friendly ties. In such a scenario, should the court give its imprimatur to such a settlement. The answer depends on various incidental aspects which need serious discourse.

The Legislators has categorically recognized that those offences which are covered by the provisions of section 320 of the Code are concededly those not only do not fall within the category of heinous crime but also which are personal between the parties. Therefore, this provision recognizes whereas there is a compromise between the parties the Court is to act at the said compromise and quash the proceedings. However, even in respect of such offences not covered within the four corners of Section 320 of the Code, High Court is given power under Section 482 of the Code to accept the compromise between the parties and quash the proceedings. The guiding factor is as to whether the ends of justice would justify such exercise of power, both the ultimate consequences may be acquittal or dismissal of indictment. This is so recognized in various judgments taken note of above.

29. At this juncture, we would like also 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 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 para. 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 I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding 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

9. In case titled Central Bureau of Investigation vs Sadhu Ram Singla & ors reported in 2017 AIR (SC) 1312. It is apt to reproduce paragraphs 8 to 16 as under:

"8. We have heard learned Additional Solicitor General appearing for the CBI and learned senior counsel appearing for the respondents at length and carefully examined the materials placed on record. We have also taken notice of the fact that the counsel for the appellant in High Court had sought time for filing the reply but no reply was filed. We have also taken notice of the fact that the High

Court while quashing the said FIR and consequential proceedings, has relied on the Full Bench judgment of that High Court in the case of Kulwinder Singh & Ors Vs. State of Punjab & Anr., 2007 (4) CTC 769, in which reliance was placed on the judgment delivered by this Court in the case of Mrs. Shakuntala Sawhney Vs. Mrs. Kaushalya Sawhney & Ors., (1980) 1 SCC 63.

9. Learned Additional Solicitor General appearing for the CBI has drawn our attention to the decision of this Court in Manoj Sharma Vs. State & Ors., (2008) 16 SCC 1, wherein it was observed by this Court:

"22. Since Section 320 CrPC has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 CrPC to direct doing something which CrPC has expressly prohibited. Section 320(9) CrPC expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence."

10. We further wish to supply emphasis on the judgment delivered by this Court in the case of State of Tamil Nadu Vs. R. Vasanthi Stanley & Anr., (2016) 1 SCC 376, wherein it was observed:

"15. As far as the load on the criminal justice dispensation system is concerned it has an insegregable nexus with speedy trial. 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. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of."

11. Further reliance was placed on the decision of this Court in the case of Central Bureau of Investigation Vs. A. Ravishankar Prasad & Ors., (2009) 6 SCC 351, wherein it was held:

"39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice."

12. Lastly, reliance was placed upon another judgment of this Court in Central Bureau of Investigation Vs. Maninder Singh, (2016) 1 SCC 389, wherein it was held by this Court:

"19. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi case, (2014) 15 SCC 29, the order of the High Court cannot be sustained."

13. Resisting the aforesaid submissions it was canvassed by Mr. Bishwajit Bhattacharya, learned senior counsel appearing for the respondents that High Court has judiciously and rightly considered the facts and circumstances of the present case. Relying upon the judgment of this Court in Gian Singh Vs. State of Punjab & Anr., (2012) 10 SCC 303, learned senior counsel appearing for the respondents strenuously urged that the offences in the present case are not heinous offences. He further drew our attention towards the relevant part of Full Bench judgment of the High Court in Kulwinder Singh & Ors. Vs. State of Punjab & Anr. (supra), which was reproduced in the impugned judgment and the same is reproduced hereunder:

"26. In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney & Ors.,(1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summed up the essence of compromise in the following words :-

The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything; except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C. or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C."

14. Since the present case pertains to the crucial doctrine of judicial restraint, we are of the considered opinion that encroaching into the right of the other organ of the government would tantamount clear violation of the rule of law which is one of the basic structure of the Constitution of India. We wish to supply emphasis on para 21 of the Manoj Sharma's case (supra) which is as follows:

"21. Ordinarily, we would have agreed with Mr. B.B. Singh. The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in Aravali Golf Club v. Chander Hass (2008) 1 SCC 683 and Govt. of A.P. v. P. Laxmi Devi (2008) 4 SCC 720, restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ."

15. Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in Manoj Sharma's case (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties."

10. Further, as the parties have arrived at a compromise, so there would be no chance of conviction in near future in case trial is held and concluded.

11. In view of the above, this petition stands allowed.

12. Consequently, FIR No.146/2004 under Section 420, 337, 109, 506 RPC as also Challan pending before the Court of learned CJM Doda arising out of afore said FIR No.146/2004, are quashed in view of compromise arrived at between the parties.

13. Copy of this order be sent to Court below for compliance.