
(2022) 02 SIK CK 0025

In the Sikkim High Court

Case No : Criminal Miscellaneous Case No. 09 Of 2021

Pema Chultim Bhutia & Ors

APPELLANT

Vs

State Of Sikkim

RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 231(2), 311, 320, 482
Indian Penal Code, 1860 — Section 34, 147, 148, 149, 294, 307, 323, 324, 326, 341, 380, 448, 504, 506

Citation : (2022) 02 SIK CK 0025

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Dewen Sharma Luitel, Yadev Sharma, Sujan Sunwar

Final Decision : Allowed

Judgement

Bhaskar Raj Pradhan, J

1. This judgment shall consider the application under section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) filed by the petitioners jointly to quash the First Information Report (FIR) as well as the criminal proceedings pursuant thereto against the petitioner no.1 on a complaint by the petitioner nos. 2, 3 and 4.

2. Heard Mr. Dewen Sharma Luitel, learned counsel for the Petitioners as well as Mr. Yadev Sharma, learned Additional Public Prosecutor for the State-respondent. The learned counsel for the petitioners submits that this is a fit case to exercise powers under section 482 Cr.P.C. and quash the criminal proceedings including the FIR in view of the amicable settlement arrived at between the petitioners relying upon various judgments discussed herein below. The learned counsel for the petitioners submits that all differences between the petitioner no.1 on the one hand and the petitioner nos. 2, 3 and 4 on the other have been resolved and they have agreed to maintain a harmonious relationship and live peacefully. The petitioner nos. 2, 3 and 4 do not want to contest the case and has no grievances

against the petitioner no.1 anymore. They have agreed to abide by the compromise deed and move on with their lives. The learned Additional Public Prosecutor submits that in view of the compromise deed entered between the petitioners the State-respondent has no objection if the criminal proceedings are quashed.

3. The FIR was registered on 05.11.2019 at Rabong Police Station. It alleged that petitioner no.1 assaulted the petitioner nos. 2, 3 and 4 while they were on duty due to which they sustained severe injuries. The FIR also alleged that they had been threatened with dire consequences. It further alleged that petitioner no.1 had forcefully stopped the company vehicles of M/s S & P Infrastructure Development (P) Limited and snatched the keys.

4. The investigation led to the filing of final report under section 173 of the Cr.P.C. alleging commission of offences under section 341, 323, 326 and 506 of the Indian Penal Code, 1860 (IPC). On 02.08.2021 the learned Judicial Magistrate, Yangang Sub-Division, South Sikkim framed charges against the petitioner no.1 under section 341, 323, 326 and 506 of the IPC. The orders of the learned Trial Court reflect that the witnesses are yet to be examined. On 10.08.2021 the learned counsel for the petitioner no.1 submitted before the learned Trial Court that the petitioners were on the verge of settlement of their disputes and would approach this court for quashing the FIR.

5. A compromise deed dated 07.08.2021 has been filed along with this petition entered between the petitioners in which it is stated that after the intervention of family members, friends and well wishers of all the parties who are well known to each other, they have reached an amicable settlement. It is stated that since they have compromised the matter the petitioner nos. 2, 3 and 4 does not desire to press the charges against the petitioner no.1 and they do not have any objection if this court annuls the FIR and the criminal proceeding pursuant thereto.

6. Section 341, 323 and 506 of the IPC are compoundable offences. Section 341 IPC is compoundable by the person restrained or confined. Section 323 IPC is compoundable by the person to whom the hurt is caused. Section 506 IPC is compoundable by the person intimidated. In the present case the petitioner nos. 2, 3 and 4 who are the complainant are personally present in court and state that they have compromised the case with the petitioner no.1 which is recorded in the compromise deed as well.

7. Section 326 IPC is a non-compoundable offence. The charge against the petitioner no.1 is that he had voluntarily caused grievous hurt to petitioner no.2 by slapping and punching him. Although the trial is yet to begin, the medical report of the petitioner no.2 filed along with the final report suggests that he was bleeding from the nose and had diminished hearing from the left ear. The report suggests that the petitioner no.2 had suffered moderate hearing loss (sensorineural hearing loss) of the left ear because of which the report suggested

that the injury was grievous in nature.

8. Mr. Dewen Sharma Luitel, learned counsel for the petitioner relied upon the judgment of the Supreme Court in *Yogendra Yadav vs. State of Jharkhand* (2014) 9 SCC 653 to urge before this court that in view of the compromise deed FIR could be quashed. In *Yogendra Yadav* (supra) there were two cross FIRs. The first FIR alleged commission of offences under section 341, 323, 324, 504 and 307 read with section 34 of the IPC. The second FIR alleged commission of offences under section 147, 148, 149, 448, 341, 323 and 380 of the IPC. In both cases charge-sheets were submitted after investigation and while the cases were going on the parties agreed to compromise. A panchayat was held with the intervention of well wishers and compromise petition signed. Pursuant thereto an application was filed under section 231 (2) read with section 311 of the Cr.P.C. As section 324, 341 and 323 of the IPC were compoundable offences and section 326, 307 read with section 34 IPC were non-compoundable the application for compounding was accepted but the prayer for compounding the non-compoundable offences was rejected by the learned Additional Sessions Judge. The High Court had dismissed the challenge to the order of the learned Additional Sessions Judge. The matter then reached the Supreme Court which held:

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 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 Punjab* [*Gian Singh v. State of Punjab*, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). 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 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 tranquillity 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.

5. In Gian Singh [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] this Court has observed that: (SCC p. 340, para 58)

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor."

Needless to say that the above observations are applicable to this Court also.

6. The learned counsel for the parties have requested this Court that the impugned order [Yogendra Yadav v. State of Jharkhand, Criminal MP No. 1915 of 2011, order dated 4-7-2012 (Jhar)] 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 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. The 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. The State of Jharkhand has 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."

9. The law regarding the power of the High Court in quashing FIRs on settlement arrived at between the parties under section 482 of the Cr.P.C. is well settled by a catena of decisions of the Supreme Court. In Gian Singh vs. State of Punjab (2012) 10 SCC 303 the Supreme Court summarized the position thus:

"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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

10. In *Narendra Singh vs. State of Punjab* (2014) 6 SCC 466 the Supreme Court laid 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 Cr.P.C. 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 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 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.

29.4. On the other hand, 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 are 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/delicate 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 latter 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."

11. In *State of Madhya Pradesh vs. Laxmi Narayan* (2019) 5 SCC 688 the Supreme Court while examining all the previous relevant judgments on the point held:

"15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved 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;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;

15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have

resolved their entire dispute amongst themselves. 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 framing 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/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.”

12. In Ramgopal vs. State of Madhya Pradesh 2021 SCC OnLine SC 834 the Supreme Court dealt with a case in which the accused had been convicted for various offences under section 294, 323 and 326 read with section 34 IPC. The appellant No.1 therein was alleged to have struck the complainant with a pharsa, which resultantly cut off the little finger of his left hand. During the pendency of the appeal a compromise had been entered between the parties. The Supreme Court held:

“11. True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the

process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh v. State of Punjab* 3 and *Laxmi Narayan* (Supra).

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a ? settlement? through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

13. During the hearing the petitioner no.2 who was personally present stated that all differences between the petitioner no.1 and him have been amicably resolved and that after being treated he does not have a hearing problem anymore.

14. In these circumstances, this court is called upon to consider if the FIR and the criminal proceeding against the petitioner no.1 be quashed in exercise of its power under section 482 Cr.P.C. having regard to the fact that the parties have amicably settled their disputes and the victims (petitioner nos. 2, 3 and 4) have no objection to it. The offence under section 326 IPC is non-compoundable but not a heinous offence. The records prima facie reveal that the incident occurred when the petitioner nos. 2, 3 and 4, as officers of the company engaged in the construction of the highway, sought to remove the construction outside the residence of the petitioner no.1's father-in-law (with his permission) which fell outside his private area and where the highway was to be constructed. It transpires that the petitioner no.1 however, got agitated by the fact that the petitioner nos. 2, 3 and 4 broke and cleared the part of the cemented construction which was constructed by his father-in-law but under the road construction area. This led to the petitioner no.1 allegedly attacking the petitioner nos. 2, 3 and 4.

15. There is nothing to suggest or doubt that the compromise entered between the petitioners is not bona fide. Besides the offence under section 326 IPC all other offences being compoundable have been compromised between the petitioners. Having resolved their dispute and differences compounding the other related offences and not allowing the compromise to go through with regard to the offence under section 326 IPC may lead to a situation which may not secure the ends of justice and prevent abuse of the process of court. Possibility of conviction in such cases may be bleak. As stated earlier the trial is yet to begin. The Supreme Court is clear that the High Court can show benevolence in exercising its power favorably after prima facie assessment of the circumstances/material even in cases where the charge is framed but evidence is yet to start or is still at infancy stage. As held by the Supreme Court in Ramgopal (supra) criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions.

16. In view of the aforesaid, the petition under section 482 Cr.P.C. filed by the petitioners is allowed. FIR No.29/2019 dated 05.11.2019 as well as the Criminal Proceeding i.e. G.R. Case No.21 of 2020 pending in the Court of the learned Judicial Magistrate, Yangang, Sub-Division, South Sikkim are hereby quashed.

17. It is hoped that the petitioner no.1 who is a graduate does not in the future take law into his own hands to resolve disputes which can be effectively settled by approaching the relevant authorities as well as the courts of law.