

(2021) 08 SHI CK 0224

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No.348 Of 2021

Sahil Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 323, 326, 452, 498A, 506
Code Of Criminal Procedure, 1973 — Section 173, 245, 320, 482
Code Of Criminal Procedure, 1898 — Section 561A

Citation : (2021) 08 SHI CK 0224

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Vishwa Bhushan, Gurmeet Bhardwaj, Arvind Sharma, Manoj Bagga, Ashok Kumar

Final Decision : Allowed

Judgement

FIR No.,Dated,Police Station,Sections

86,16.04.2018,"Kangra, district Kangra,

H.P.,"353 and 186 read with

Section 34 of IPC and

Section 3 of HP

Medicare Service

Person Act No.5 of

2009.

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 Indian",,,

Penal Code at Police Station Sector 3, Chandigarh and all consequential

proceedings arising therefrom including the final report presented",,,
under Section 173 of the Code and charges framed by the trial court are hereby
quashed.,,,

9. In *Y. Suresh Babu v State of A.P.*, 2005 (1) SCC 347, Honâ??ble Supreme
Court, while dealing with section 326 of IPC, which was non-",,,

compoundable offence, permitted the parties to compound the offence.",,,

STAGE OF QUASHING FIR:,,,

10. In *Ashok Chaturvedi v Shitul H. Chanchani*, 1998(7) SCC 698, Honâ??ble
Supreme Court holds that the determination of the question as regards",,,

the propriety of the order of the Magistrate taking cognizance and issuing
process need not necessarily wait till the stage of framing the charge. The,,,

Court holds, â??â?|This argument, however, does not appeal to us inasmuch as
merely because an accused has a right to plead at the time of framing",,,

of charges that there is no sufficient material for such framing of charges as
provided in Section 245 of the Criminal Procedure Code, he is debarred",,,

from approaching the court even at an earliest (sic earlier) point of time when
the Magistrate takes cognizance of the offence and summons the,,,

accused to appear to contend that the very issuance of the order of taking
cognizance is invalid on the ground that no offence can be said to have,,,

been made out on the allegations made in the complaint petition. It has been
held in a number of cases that power under Section 482 has to be,,,

exercised sparingly and in the interest of justice. But allowing the criminal
proceeding to continue even where the allegations in the complaint petition,,,

do not make out any offence would be tantamount to an abuse of the process of
court, and therefore, there cannot be any dispute that in such case",,,

power under section 482 of the Code can be exercised.,,,

11. In *Girish Sarwate v. State of A.P.*, 2005(1) R.C.R.(Criminal) 758, the Full
Bench of Andhra Pradesh High Court observed that the High Court",,,

need not wait for completion of investigation and taking cognizance by the
Magistrate.,,,

NON-COMPOUNDABLE OFFENCES CAN BE QUASHED:,,,

12. In the present case, the offence under Section 498-A IPC is not
compoundable under Section 320 CrPC. However, the following precedents are",,,

relevant. In *State of Madhya Pradesh v Laxmi Narayan*, Cr.A No. 349 of 2019,
decided on 5th of March, 2019, Honâ??ble Supreme Court holds",,,

[13]. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:",,,

i) 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;,,,

ii) 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;" ,,,

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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;,,,

iv) 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/delegate 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 paragraphs 29.6 and 29.7 of the decision of this Court in the case of" ,,,

Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;,,,

v) 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.",,,

13. In Narinder Singh v State of Punjab, 2014 (2) R.C.R. (Criminal) 482, Supreme Court holds, â??[31]. 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:,,,

(I) 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.,,,

(II) 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.,,,

(III) 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.,,,

(IV) 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.,,,

(V) 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.,,,

(VI) 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.,,,

(VII) 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."",,,

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:",,,

14. The law is almost settled by larger benches judgments of Supreme Court that the offences, those are not listed as compoundable, under Section",,,

320 Cr.PC, can also be compounded, and the procedure to follow would be by quashing the FIR, and consequent proceedings. In R.P. Kapur v State",,,

of Punjab, AIR 1960 SC 866, a three- member Bench of Honâ??ble Supreme Court holds, â??[6]. ...It is well established that the inherent",,,

jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or",,,

otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the",,,

Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to",,,

lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where",,,

the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to",,,

take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the",,,

Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an",,,

offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance",,,

of the said proceeding, the High Court would be justified in quashing the proceedings on that ground. Absence of the requisite sanction may, for",,,

instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they",,,

are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence",,,

arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In",,,

such case, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued",,,

against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise.,,,

In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal",,,

evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is",,,

important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly",,,

inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in",,,

question. In exercising its jurisdiction under S. 561-A, the High Court would not embark upon an enquiry as to whether the evidence in question is",,,

reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent",,,

jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly,,,

stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and",,,

that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, AIR 1928 Bom 184, Jagat Chandra Mozumdar v.",,,

Queen Empress, ILR 26 Cal 786, Dr. Shankar Singh v. State of Punjab, 56 Pun LR 54 : (AIR 1954 Punj 193), NripendraBhusan Roy v.",,,

GobinaBandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v. SivaramaSubramania, ILR 47 Mad 722 : (AIR 1925 Mad 39).â??",,,

15. In Madhavrao Jiwaji Rao Scindia v Sambhajirao ChandrojiraoAngre, 1988 (1) SCC 692, a three judgesâ?? bench of the Honâ??ble Supreme",,,

Court holds â??[7]. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the",,,

court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any,,,

special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.,,,

This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction,,,

is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into",,,

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.â??",,,

16. A three Judges bench of Honâ??ble Supreme Court, in Gian Singh v. State of Punjab, 2012(10) SCC 303, has settled the law on quashing on",,,

account of compromise/compounding, in the following terms. â??[53]. Section 482 of the Code, as its very language suggests, saves the inherent",,,

power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the,,,

ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner",,,

of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section,,,

482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482",,,

confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the",,,

process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the",,,

Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the",,,

express bar of law engrafted in any other provision of the Code. [57]. Quashing of offence or criminal proceedings on the ground of settlement",,,

between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the",,,

power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High",,,

Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in",,,

Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a",,,

criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such",,,

exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. [58]. Where High Court quashes a criminal",,,

proceeding having regard to the fact that dispute between the offender and victim has been settled although 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. No doubt, crimes are acts which have harmful",,,

effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer",,,

only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made",,,

compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of",,,

mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences",,,

committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However,",,, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or",,,, such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to",,,, victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made",,,, compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is",,,, satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings,",,, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts,,, and no hard and fast category can be prescribed.â??,,,

17. In *Parbatbhai Aahir v State of Gujarat*, (2017) 9 SCC 641, a three Judges Bench of Honâ??ble Supreme Court, laid down the broad principles for",,,, quashing of FIR, which are reproduced as follows:",,,

[16]. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:",,,

16 (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 recognises and preserves powers which inhere in the High Court;,,,

16 (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.,,,,

16 (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;,,,

16 (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; 16 (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;,,,

16 (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;,,,

16 (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;,,,

16 (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;,,,

16 (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,,,

16 (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.,,,

CONCLUSION:,,,

18. Although, the withdrawal of FIR would be through District Magistrate as a routine procedure. However, the High Court's inherent jurisdiction",,,

under Section 482 of the CrPC, to intervene in such kind of matter, and it is not the requirement of law that the cancellation has to be approved only",,,

through the District Magistrate. Inherent Jurisdiction of the High Court under section 482 CrPC can always be exercised, depending upon the facts",,,

and circumstances. The parties are likely to live together for a lifetime, and intervention would create a cordial environment for peaceful relations",,,

between them.,,,

19. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter. Given the entirety of the,,,

case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any fruitful purpose whatsoever.",,,

20. In the present case, the offenses are not compoundable under section 320 CrPC. Be that as it may, this Court is inclined to invoke the inherent",,,

jurisdiction under section 482 CrPC to quash the FIR and all subsequent proceedings in the peculiar facts and circumstances.,,,

21. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, 2018 (4) Crimes 324, Honâ??ble Supreme Court holds â??[47]. As far",,,

as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the",,,

reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their,,,

petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold",,,

that FIR needs to be quashed, order of cognizance would automatically stands vitiated.â??",,,

22. In *Shakuntala Sawhney v Kaushalya Sawhney*, (1979) 3 SCR 639, at p 642, Honâ??ble Supreme Court observed that the finest hour of Justice",,,

arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.",,,

23. Given above, because of the compromise, this is a fit case where inherent

jurisdiction of the High Court under Section 482 of the Code of Criminal",,,

Procedure is invoked to quash the proceedings mentioned above. The FIR mentioned above is quashed, and all the consequential proceedings are also",,,

quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.",,,

24. In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.",,,

Copy dasti,,,