
(2018) 01 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : 480 of 2017

Sahil & others

APPELLANT

Vs

State of Himachal Pradesh & another

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 323](#),
[Section 148](#), [Section 149](#)

Citation : (2018) 01 SHI CK 0011

Hon'ble Judges : Sanjay Karol

Bench : Single Bench

Advocate : Ankush Dass Sood, Shweta Joolka, R.S.Verma, M.A.Khan, Rakesh K. Sharma

Judgement

1. S/Sh.Sahil, Abhishek, Manish, Rahul & Tovinder (petitioners) and Musafir Chauhan (respondent No.2) are present in Court and stand duly

identified by their respective learned counsel.

2. This petition under Section 482 of the Code of Criminal Procedure (for short "Code") has been preferred by the petitioner for quashing the FIR

No.122/2017, dated 28.08.2017, registered at Police Station, Dhalli, Shimla, H.P., under the provisions of Sections 341, 323, 148 and 149 of

the Indian Penal Code and all the consequential proceedings arising thereof.

3. It is alleged by the complainant that on 16.08.2017, at about 2.15 pm, when he reached just next to the college gate near the hand-pump, all of

sudden 70/80 persons after restraining him attacked with dandas and knuckle duster, as a result of which he sustained injuries.

4. The matter was reported to the police, by the complainant, on the basis of

which FIR No.122/2017, dated 28.08.2017, came to be registered against the present petitioners.

5. This petition stood filed on the premise that the matter stands compromised between the present petitioners and the private respondent vide compromise deed (Annexure P-2, dated 18.12.2017).

6. Today, the case was taken up for consideration. Learned counsel for the petitioners states that matter stands compromised between Sahil, Abhishek, Manish, Rahul and Tovinder (petitioners) and Musafir Chauhan (respondent No.2), present in Court.

7. That this is not such a case wherein the offences for which the petitioner has been charged can be *stricto sensu* held to be the offences against the State. Even otherwise, when matter stands compromised, the possibility of conviction is remote and bleak and the continuation of the criminal case against the petitioner would put him to great oppression and prejudice and extreme injustice would be caused to them by not quashing the criminal case.

8. In *Narinder Singh & Ors. v. State of Punjab & Anr.* JT 2014 (4) SC 573 the Hon"ble Supreme Court after summing up the legal position has laid down the following guidelines for the High Court in giving adequate treatment to the settlement between the parties and exercising its powers 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, which reads thus:-

(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 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.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

9. Keeping in view the aforesaid guidelines, it is not disputed that the parties have reached a settlement and on that basis have preferred the present

proceedings seeking quashment of the FIR. Respondent No.2, is the worst affected person on account of this accident and the quashing of said

FIR would definitely be to secure the ends of justice and to prevent abuse of process of the Court.

10. The facts of this case otherwise do not in any manner fall within the exceptions laid down by the Hon"ble Supreme Court where compromise cannot be entered into or the proceedings cannot be quashed.

11. Thus, taking holistic view of the matter and looking into all attending facts and circumstances, I find this case to be a fit case to exercise powers

under Section 482 of the Code and accordingly FIR No.122/2017, dated 28.08.2017, registered at Police Station, Dhalli, Shimla, H.P.,

under the provisions of Sections 341, 323, 148 and 149 of IPC, is ordered to be quashed. Since FIR has been quashed, all consequential

proceedings arising thereof, are thereby rendered infructuous. However, the same are expressly quashed so as to obviate any confusion.

12. Also undertaking of the complainant is accepted and taken on record, who has also been made aware of the consequences of breach thereof.

With the aforesaid observations, present petition stands allowed and disposed of accordingly, so also pending application(s), if any.