

---

**(2015) 03 RAJ CK 0109**  
**In the Rajasthan High Court**  
**Case No : Criminal Misc. Petition No. 384/2015**

Shivnath Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

---

**Date of Decision :** 19-03-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

**Citation :** (2015) 03 RAJ CK 0109

**Hon'ble Judges :** Vijay Bishnoi, J.

**Bench :** Single Bench

**Advocate :** Pradeep Choudhary, for the Appellant; Vikram Rajpurohit, Public Prosecutor, Advocates for the Respondent

**Final Decision :** Allowed

---

## Judgement

Vijay Bishnoi, J.—This criminal misc. petition under Section 482 Cr.P.C. has been filed by the petitioners being aggrieved with the order dated 27.01.2015 passed by the Metropolitan Magistrate No. 2, Jodhpur Metropolitan (hereinafter referred to as "the trial court") in Criminal Case No. 1401/2010 - State Vs. Shivnath Ram and Ors. whereby the trial court attested the compromise produced on behalf of the petitioners and the complainant and discharged the petitioners from the offences punishable under Sections 323, 325, 427, 447 and 451 I.P.C., however, refused to attest the compromise for the offences punishable under Sections 147, 148 and 149 I.P.C.

2. The petitioners are facing trial for the aforementioned offences on the basis of a complaint filed by the respondent No. 2. During the pendency of the trial, the petitioners and respondent No. 2 have entered into a compromise and settled their dispute amicably and pursuant to that, they moved an application before the trial court for compounding the offences against the petitioners. The trial court has allowed the said application in part and attested the compromise for the offences punishable under Sections 323, 325, 427, 447 and 451 I.P.C. and

also discharged them from the aforesaid offences, however, refused to attest the compromise for the offences punishable under Sections 147, 148 and 149 I.P.C. while observing that the same are not compoundable.

3. Learned counsel for the petitioners has submitted that the dispute between the parties was in respect of residential plot and now the said dispute has already been resolved, therefore, in exercise of inherent powers, the criminal proceedings pending against the petitioners may be terminated. It is also contended that the parties are belonging to same caste and are also relatives and decided to live peacefully and if the trial against the petitioners continue the compromise arrived between the parties may be unsettled.

4. Learned counsel appearing for the respondent No. 2 has also verified that the parties have already entered into compromise and have resolved their dispute amicably and now the respondent No. 2 does not want to press the charges against the petitioners for the offences punishable under Sections 147, 148 and 149 I.P.C.

5. Both the learned counsels for the parties have placed reliance upon the judgments of Hon"ble Supreme Court rendered in the case of Gian Singh Vs. State of Punjab and Another, , Narinder Singh and Others Vs. State of Punjab and Another, and Yogendra Yadav Vs. The State of Jharkhand, and judgment of this Court rendered in S.B. Criminal Misc. Petition No. 2970/2014 - Surajpal singh and Ors. Vs. State of Rajasthan and Anr. decided on 02.12.2014.

6. Heard learned counsel for the parties.

7. From perusal of the charge sheet, it is clear that in respect of a plot there was some dispute between the petitioners and the respondent No. 2 and on 22.6.2009, there was a free fight between the parties for taking possession over the plot in question. In the said free fight, the petitioners as well as respondent No. 2 and his supporters received injuries. Both the parties filed FIRs against each other and the police, after investigation, filed charge sheet against both the parties though under different offences.

8. It seems that the dispute between the parties in relation to plot, has already been resolved. Learned counsel for the parties have submitted that the parties are relatives and now want to live in peace. It is also noticed that though the charges have been framed against the petitioners by the trial court, but none of the prosecution witnesses have not been examined till date.

9. The Hon"ble Apex Court while answering a reference in the case of Gian Singh Vs. State of Punjab and Another, , has held as below:-

"57. 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 predominatingly 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 the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." 10. In *Narinder Singh and Ors. vs. State of Punjab and Anr.* (supra), the Hon'ble Supreme Court has laid down the following principles:

"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 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 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. As noticed earlier that none of witnesses have been examined so far and looking to the fact that the parties have already settled their dispute amicably, there is no possibility of conviction of the petitioners. Hence, it is a fit case wherein the criminal proceedings pending against the petitioner can be quashed.

12. In view of the law laid down by the Hon'ble Supreme Court in Gian Singh's case (supra) and in Narinder Singh's case (supra) and in the facts and circumstances as noted above, this Criminal Misc. Petition is allowed and the proceeding of Criminal Case No. 1401/2010 - State Vs. Shivnath Ram and Ors. pending in the Court of Metropolitan Magistrate No. 2, Jodhpur Metropolitan (arising out of FIR No. 96/2009 of Police Station Jhanwar, District Jodhpur) against the petitioners are hereby quashed.

13. Stay petition is disposed of.