

(2023) 05 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 19569 Of 2023

Varun And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 04-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 34, 498A

Citation : (2023) 05 MP CK 0024

Hon'ble Judges : Vijay Kumar Shukla, J

Bench : Single Bench

Advocate : Omprakash Solanki, Bhagyashree Gupta, Kaushal Sisodiya

Final Decision : Allowed/Disposed Of

Judgement

Vijay Kumar Shukla, J

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashment of Criminal Case No.121/2018 pending before JMFC, Jhabua arising out of Crime No.45/2018 registered at P.s. Jhabua for commission of offence u/s.498-A, 34 of IPC on the ground of compromise between the applicants and the respondent No.2.
2. An application for compounding was filed before the trial court and the statement was also recorded by the Magistrate but since the offence was non compoundable, and, therefore, compounding was not permitted.
3. Counsel for respondent No.2 does not dispute the said fact that the matter has been compromised between the parties.
4. In view of the above, it would be apposite to survey the law in respect of compounding in non-compoundable case. The Apex Court in the case of Gian Singh Vs. State of Punjab and Anr. reported in (2012) 10 SCC 303 after considering the the provisions of section 320 and 482 of the Cr.P.C held that the

compounding can be permitted in a non-compoundable offence.

Relevant part of the order of the order reads as under :-

"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.

B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment."

5. In a subsequent order, in the case of Narinder Singh and Ors Vs. State of Punjab and Anr. passed in Criminal Appeal No.686/2014 dated 27.03.2014 after relying on the judgment passed in the case of Gian Singh (supra), the Apex Court permitted the compounding in a non-compoundable case and quashed the criminal proceedings.

6. In the case of Daxaben vs. State of Gujarat (Arising out of SLP (Crl.) No.1132-1155 of 2022), the Apex Court held that the inherent power of the High Court under Section 482 of the Cr.P.C. is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse of the process of Court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 of the Cr.P.C. to quash the criminal proceedings.

7. In the case of Yogendra Yadav & Ors. vs. The State of Jharkhand & Anr. AIR 2015 SC (Criminal) 166, the Apex Court held as under:-

"Needless to say that offences which are non-compoundable cannot be

compound 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). 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 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."

8. In Yogendra Yadav's case (supra), charges were under Sections 307 & 326 IPC. The apex Court was of the view that the High Court could have exercised its jurisdiction under Section 482 of Cr.P.C. because parties have amicably settled the dispute and the case did not pertain to an offence of moral turpitude or grave offences like rape, murder etc.

9. In the case of Ramgopla & Anr. vs. State of MP (Criminal Appeal No.1489/2012, decided on September 29, 2021), the Apex Court held in para 12 as under:-

"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 therefore, 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."

10. In the case of State of M.P. vs. Laxmi Narayan (2019) 5 SCC 688, a Three Judge Bench of the Apex Court discussed the earlier judgments of the Apex Court and laid down the principles in para-15. The relevant para-15.1 & 15.2 are reproduced as under:-

"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;"

11. In the case of Jaswant Singh vs. State of Punjab & Anr., Criminal Appeal No.1233 of 2021 (Arising out of SLP (Crl.) No.7072 of 2021 decided on 20.10.2021), the Apex Court held in para 61 that criminal cases having overwhelmingly and predominantly 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, the proceedings can be quashed in exercise of the powers under Section 482 of the Cr.P.C. in non-compoundable cases on the basis of compounding.

12. In the light of the aforesaid judgments the facts of the present case are examined. The applicant No.1 and the respondent No.2 are husband wife. Applicant No.2 and 3 are in-laws of respondent No.2. The matter has been amicably settled between the parties.

13. Considering the aforesaid facts and taking into consideration the settlement between the accused persons and the complainant that they have amicably settled their dispute and are leading peaceful life, no purpose would be served in continuing the criminal proceedings after a period of more than 8 years.

14. In view of the above, the application under Section 482 Cr.P.C. is allowed and the Crime No.45/2018 registered at Police Station Jhabua for offence u/Ss.498-A, 34 of IPC as well as criminal case No.121/2018 pending before JMFC, Jhabua are quashed.

15. Accordingly, the M.Cr.C. stands allowed and disposed of.