

(2015) 09 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 283 of 2015

Vijay Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Motor Vehicles Act, 1988 — Section 187
Penal Code, 1860 (IPC) — Section 201, 279, 307, 337

Citation : (2015) 09 SHI CK 0100

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : N.K. Thakur, Senior Advocate and Ramesh Sharma, for the Appellant; Meenakshi Sharma, Rupinder Singh, Additional Advocate Generals and Parul Negi, Deputy Advocate General, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Tarlok Singh Chauhan, J—This petition under Section 482 of the Code of Criminal Procedure (for short "Code") has been preferred by the petitioner for quashing FIR No. 292 of 2012, dated 15.11.2012, under Sections 279, 337, 201 IPC and Section 187 of the Motor Vehicles Act, registered at Police Station, Una Sadar, and consequent proceedings in criminal case bearing No. 57-1-2013 titled as "State versus Vijay Kumar" pending before the Court of learned Judicial Magistrate Ist Class, Court No. IV, Una.

2. Brief facts are that one Nikhil Raizada lodged the aforesaid FIR with the Police Station Una Sadar on the allegation that when he was coming to "Thakur Market" with his grand-father Shri Bidhi Chand, his grandfather was hit by a motorcycle bearing No. HP20D-1460 being driven by the petitioner. It is further stated the present case was registered against the petitioner due to some misunderstanding.

3. Today, the petitioner and respondent No. 2 are present before this Court and

identified as such by their respective counsel(s). It is stated by learned counsel for the parties that they have compromised the matter amicably without any pressure, coercion and undue influence and compromise Annexure P-3 to this effect has been placed on the case file. It is stated by respondent No. 2 in the compromise that he got perplexed on seeing the motorcycle bearing No. HP20D-1460 and thereby lost his control and fell down on the road. He has further stated that he has no objection in case the aforesaid FIR is quashed.

4. Though the State has expressed its slight reservation regarding compounding of the offence but I find that this is not such wherein the offences for which the petitioner has been charged can be *stricto sensu* held to be the offences against the State. Even otherwise, once respondent No. 2 has compromised the matter, the possibility of conviction is remote and bleak and the continuation of the criminal case against the petitioner would put the petitioner to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case.

5. In *Narinder Singh and Others Vs. State of Punjab and Another*, (2014) AIRSCW 2065 : (2014) CriLJ 2436 : (2014) 4 JT 573 : (2014) 4 SCALE 195 : (2014) 6 SCC 466 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 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."

6. 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. Once the respondent No. 2 does not want to hold the petitioner responsible, the quashing of such FIR would definitely be to secure the ends of justice and to prevent abuse of process of the Court.

7. 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.

8. 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. 292 of 2012, dated 15.11.2012, under Sections 279, 337, 201 IPC and Section 187 of the Motor Vehicles Act, registered at Police Station, Una Sadar, is ordered to be quashed. Since FIR No. 292 of 2012, dated 15.11.2012, under Sections 279, 337, 201 IPC and Section 187 of the Motor Vehicles Act, registered at Police Station, Una Sadar, has been quashed, the consequent proceedings in Criminal Case bearing No. 57-1-2013 titled as "State versus Vijay Kumar" pending before the Court of learned Judicial Magistrate Ist Class, Court No. IV, Una, are thereby rendered infructuous. However, the same are expressly quashed so as to obviate any confusion.

9. The petition stands allowed in the aforesaid terms.