

Neutral Citation No. - 2023:AHC:226110

Court No. - 93

Case :- APPLICATION U/S 482 No. - 43676 of 2023

Applicant :- Mahipal And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Dewendra Singh, Mehdi Abbas

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

1. Applicants Mahipal and his three co-accused persons have jointly filed this petition under Section 482 Code of Criminal Procedure for quashing of the criminal proceedings arising out of the Case Crime No. 456 of 2010, under Section 307 IPC registered at Police Station Nai Mandi, District Muzaffar Nagar which is subject matter of the Sessions Trial No. 170 of 2011, titled State vs. Mahipal and others, pending before the Additional District and Sessions Judge, Muzaffar Nagar, on the basis of the compromise dated 12.10.2023 (Annexure No. 4).

2. The above noted case was registered on the basis of the statement of Rishipal son of Kadam Singh, wherein he alleged that Mahipal, resident of his village keeps on breaching the ridge (*Dol*) of agricultural land and despite requesting him to not to do so, he tends to enter into a quarrel. My son Praveen Kumar is running a grocery shop and sons of Mahipal are also running a shop for selling hydro and acid. Today at around 3:00 PM, my son was on the shop and my nephews Sachin and Pradeep Kumar were also there when Mahipal alongwith his sons Neetu, Lalit, and father namely Sukhpal came to our shop, who alongwith Sukhpal exhorted that everyday you raise

complaint regarding breach of ridge (*Doli*), so today we will eliminate you. Upon this all the four assailants who were carrying acid in a container, with an intention to kill my son Praveen and nephews Sachin, Pradeep threw acid upon them, and it resulted in serious injuries to all of them. This incident was witnessed by Baburam son of Paldu resident of Sikhreda and Ravindra son of Madan resident of Sarmujheda, Police Station Nai Mandi, Muzaffar Nagar. At the time of incident, I was purchasing petrol from a petrol pump for my truck and on receiving the information, I reached at the spot and the witnesses told that the injured have been taken to the hospital. On these broad allegations, the above FIR was registered for the alleged commission of offences punishable under Section 307 IPC.

3. After registration of the case, the police carried out investigation and submitted the final report bearing Charge Sheet no. 118 of 2010 dated 8.5.2010 under Section 173(2) Cr.P.C against the applicants-accused for alleged commission of offence punishable under Section 307 IPC.

4. Learned counsel for the applicants submits that pursuant to the final report, the case was committed before the court of sessions for trial and during the pendency of the same, with the intervention of the respectable persons of the village, the parties have agreed to resolve the dispute and the compromise arrived at on 12.10.2023 is appended with this application as Annexure No. 4. Learned Counsel has invited the attention of the Court to the compromise and further submitted that on the basis of this settlement, the cross case registered at the

instance of applicants bearing Case Crime No. 456A of 2010, i.e. Sessions Trial No. 1109 of 2012, under Sections 323, 324, 326 is also settled and the parties do not want to contest the case against each other.

5. Learned counsel has referred to the decision of this Court in ***Mohabbat and 2 others vs. State of U.P. and another (Application U/S 482 No. 702 of 2019)*** and the decision in ***Hayyat and another vs. State of U.P. and another (Application U/S 482 No. - 796 of 2019)*** and submitted that following the decision of Hon'ble Supreme Court in ***Gian Singh vs. State of Punjab reported in (2012) 10 SCC 303***, this Court has quashed the criminal proceedings relating to the alleged commission of offence punishable under Section 307 IPC. He prays that the petition be allowed and the criminal proceedings pending against the applicants be quashed on the basis of the compromise.

6. At this stage, learned counsel for the respondent no. 2 namely Rishipal has filed the counter affidavit which is taken on record.

7. Learned counsel for the respondent no. 2 has stated that indeed the parties have amicably settled the dispute and he has no objection in case, the prayer made by the applicants for quashing of the FIR is accepted. According to the learned counsel for respondent no. 2, in view of the compromise of the parties, the chances of conviction have become weak, therefore, no useful purpose would be served by continuing with the criminal proceedings.

8. The prayer is opposed by the learned State Counsel who has argued that the offences are serious and in such

cases, the compromise between the parties is meaningless as the nature of the offence is not against an individual, but is against the society. He prays that the petition be dismissed.

9. During the course of hearing, it is not disputed by the learned counsel for the applicants and the learned counsel for the respondent no. 2 that in the alleged occurrence, victim Sachin had suffered serious deep burn injuries on vital parts of his body, i.e. face, front of chest upper part, front of neck, both upper arms, front of thigh, right denum of foot etc. and similarly the other two injured namely Praveen and Pradeep also suffered deep burn injuries on the vital parts of their bodies.

10. Learned counsel for the parties have been heard and with their assistance, the case file has been perused.

11. After hearing the learned counsel for the parties and considering their submissions, this Court finds that the solitary ground of compromise set up in this petition for quashing of the criminal proceedings is not worth acceptance considering the manner of the commission of offences, as well as the nature and seriousness of the injuries suffered by the victims. No doubt, by interpretation, the High Courts and the Hon'ble Supreme Court have injected some elasticity in quashing criminal proceedings, relating to the non-compoundable offences, through exercise of inherent powers under Section 482 Code of Criminal Procedure, but such a relaxation cannot be construed as an absolute one and would depend upon various factors including the magnitude of the offences,

manner of the commission of offences, weapons used in the crime etc. and effect on the society.

12. By now it is well settled that the penal laws are aimed to deter the citizens from resorting to the commission of crime, and if, the offences of heinous nature are allowed to be compromised, it would adversely impact the object of penal laws. If, the power under Section 482 Cr.P.C. is permitted to be exercised in respect of the heinous crimes, then it would certainly encourage the criminals to take law in their own hands. At this stage, this Court deems it appropriate to refer the decision of Hon'ble Supreme Court in ***Gian Singh vs. State of Punjab* reported in (2012) 10 SCC 303**, wherein the Apex Court while examining the exercise of inherent powers under Section 482 Cr.P.C. on the basis of compromise in relation to the serious offences made the following observations:-

"61. 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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."

13. Apart from the above decision, the Hon'ble Supreme Court in ***the State of Madhya Pradesh vs. Laxmi Narayan and others*** reported in **2019 AIR (Supreme Court) 1296** further laid down the principles for quashing of the criminal proceedings on the strength of compromise, in non-compoundable offences by exercising inherent powers under Section 482 Cr.P.C. The relevant portion of the judgment is extracted below:-

"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 impart 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.

14. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused."

14. Thus, in view of the above decision of the Hon'ble Supreme Court, the citations relied upon by the learned counsel for the applicants in ***Mohabbat's case (supra)***

and Hayyat,s case (supra) would not be applicable as in the said cases, the above noticed principles laid down by Hon'ble Supreme Court in the case of *State of Madhya Pradesh Vs. Laxmi Narayan and others, 2019(5) SCC 688* had not been noticed.

15. Now while reverting to the facts of the case in hand, this Court finds that as per prosecution, the applicants were carrying acid with them and caused serious burn injuries to Sachin, Pradeep and Praveen and the manner of crime as narrated by the complainant Rishipal in the FIR is horrendous as they came to the shop of victims and threw acid on them. Further, this is a case where the applicant accused have given their own version relating to the occurrence as a cross case bearing Case Crime No. 456A of 2010 under Section 323, 324 326 IPC, Police Station Nai Mandi, District Muzaffar Nagar lodged at their instance for having suffered injuries at the hands of complainant etc., is also pending adjudication.

16. Consequently, considering the facts and circumstances of this case, this Court has no hesitation in holding that the sole ground of compromise raised by the applicants in this petition for quashing of the criminal proceedings is rejected.

17. Resultantly, without meaning any expression of opinion on the merits of the case, the application under Section 482 Cr.P.C. is dismissed.

Order Date :- 30.11.2023
Brijesh.