

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Petn. No.42 of 2024

1. Sri Prasenjit Ghosh, S/o Lt. Parimal Ghosh of Shanti Para, Pukurpar, P.S.- East Agartala, P.O.- Agartala, PIN-799001, District- West Tripura
- 2 Projwal Saha, S/o Sri Pintu Saha of Town Pratapgarh, Road No.1, P.S.- East Agartala, P.O.- Agartala, PIN-799001, District- West Tripura
3. Subham Biswas, S/o Sri Parimal Biswas of Border Gol Chakkar, P.S.- West Agartala, P.O.- Agartala, District- West Tripura

.....Petitioner(s);

Versus

The State of Tripura

.....Respondent(s).

For Petitioner(s) : Mr. K.D. Singha, Advocate,
Ms. Piyali Chakraborty, Advocate.

For Respondent(s) : Mr. Rajib Saha, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

22/11/2024

Heard Ms. Piyali Chakraborty, learned counsel for the petitioners and Mr. Rajib Saha, learned Additional Public Prosecutor for the respondent-State.

2. Petitioner No.1 is the informant and petitioner No.2 & 3 are the accused persons against whom FIR was registered for cognizable offences by the petitioner leading to submission of charge sheet under Section 341/324/34 of the IPC. The instant petition has been filed by petitioner No.1, 2 & 3 in joint capacity to invoke the inherent jurisdiction of this Court under Section 482 of the Cr.P.C for quashing of the FIR on the basis of an agreement arrived at between them. This kind of approach is quite unheard of. The petitioner No.1 has entered into an agreement with the accused persons after institution of the FIR and submission of charge sheet in respect of a cognizable non-compoundable offence. In such matters, it is the accused who is expected to

come forward for quashing of the FIR or criminal proceedings to implead the informant as the private respondent so that the Court could direct the presence of accused if *prima facie* satisfied with the plea raised by the informant before coming to a considered finding whether there are good grounds for quashing of the FIR under inherent powers of the Court. The pleadings of the instant petition are lacking as to whether the accused persons have entered appearance upon service of summons upon them and are facing the criminal justice system.

In the absence of any such averments, it can be presumed that they are evading appearance before the learned Trial Court and have chosen to invoke the inherent powers of the court jointly with the informant for quashing of the FIR. Inherent powers of the Court are not to be misused or abused in such manner. The agreement brought on record by these petitioners is not supported by any affidavit.

3. Learned counsel for the petitioners has referred to two decisions – (i) (2008) 9 SCC 116 and (ii) (2009) 13 SCC 420 – in support of the submission that the offence under Section 324 IPC can be quashed on the basis of compromise arrived at between the complainant and the appellants. The case of ***Manoj and another v. State of Madhya Pradesh*** reported in (2008) 9 SCC 116 arises after the conviction of the accused persons for the offences under Section 307 read with Section 34 of the IPC which was altered by the Madhya Pradesh High Court to Section 324 IPC against the appellants Manoj and Bijendra Singh. Both the appellants were sentenced to rigorous imprisonment for 3(three) years while the other accused has been ordered to undergo rigorous imprisonment for one year.

4. From perusal of the instant judgment it is apparent that the Apex Court had clearly observed that since the Cr.P.C Amendment Act, 2005 had not yet been brought into force, offence under Section 324 IPC was still compoundable with Court's permission. However, now Section 324 does not fall in the category of offences which are compoundable with permission of the Court. Therefore, there are two distinctive differences with the present case – one that the case of *Manoj and another* (supra) arose after conviction and appeal, whereas the present case is under trial. Secondly, at the relevant point of time Section 324 of the IPC was a compoundable offence with Court's permission which is no longer now. The case of *Mathura Singh & others v. State of Uttar Pradesh* reported in (2009) 13 SCC 420 also stands on the same circumstances where the appellant had approached the Apex Court after conviction of the accused which was partly set aside by the Allahabad High Court, Lucknow Bench in appeal. In the said case also the ratio rendered in the case of *Manoj and another* (supra) has been referred to and that Section 324 was compoundable with the permission of the Court. Both these decisions are, therefore, distinguishable from the present case.

5. Petitioners have not even annexed the injury report. Accused persons appear to be evading the process of the learned Trial Court and have instead chosen to invoke the inherent jurisdiction of this Court under Section 482 of the Cr.P.C for quashing of the FIR. In this regard, the opinion of the Apex Court at paragraphs 53 to 56 in case of *Gian Singh versus State of Punjab and another* reported in (2012) 10 SCC 303 on the scope of the inherent powers of the Court under Section 482 to prevent the abuse of the

process of any Court or otherwise to secure the ends of justice are extracted hereunder :

“53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, ‘nothing in this Code’ which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a *sine qua non*.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.”

6. This Court is conscious of the legal position as laid down by the Apex Court in decisions such as in the case of *Narinder Singh and others v. State of Punjab and another* reported in (2014) 6 SCC 466 followed in a recent decision in the case of *K. Bharthi Devi and another v. State of Telangana and another* reported in 2024 SCC OnLine 2695 as regards quashing of the FIR on the basis of the settlement arrived between the informant and the accused. The

principles laid down in the case of *Narinder Singh* (supra) have been culled out under para 29 thereof. It lays down that if the parties have reached the settlement and on that basis petition for quashing the criminal proceeding 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. The Apex Court has further laid down that 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, 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. On the other hand, 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. 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. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against 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 for the High Court to go by the nature of injury sustained, whether such injury was inflicted on the vital/delicate parts of the body, nature of weapons used, etc. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement also 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.

7. The present case is not one of those which has an overwhelmingly and predominant civil character or relates to matrimonial relationship or family disputes. Moreover, petitioner No.1, who is the informant, has chosen to join the proceedings with the accused persons in the category of petitioners on the basis of the agreement arrived at between them after submission of the charge sheet when they are apparently avoiding appearance before the learned Trial Court. The injury report has also not been brought on record when the same was the basis for filing of the charge sheet by the investigating agency. Such a vital document containing incriminating materials is an important factor to form an opinion by this Court while exercising its inherent jurisdiction in such matters.

A person who invokes the inherent jurisdiction of this court has to come with clean hands. Reference is made to the observation of the Apex Court at para 11 in the case of *Padal Venkata Rama Reddy alias Ramu Vs. Kovvuri Satyanarayana Reddy & Ors*, reported in (2011) 12 SCC 437:

“11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.”

8. In the aforesaid facts and circumstances, this Court is of the opinion that the present case is not one where the Court should interfere in the trial on the basis of an agreement arrived at between the petitioner-informant and the accused persons. The inherent powers are meant to be used to prevent abuse of the process of Court or otherwise to secure the ends of justice. It is not meant to be used by the accused persons for evading appearance before the learned Trial Court. Such an approach by the parties should not be encouraged by this Court for quashing of the FIR.

9. In view of the facts and circumstances indicated above, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

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