Reg No. 94

HIGH COURT OF JAMMU & KASHMIR & LADAKHAT AT SRINAGAR

Case No. CRM (M) 478/2025
CrIM/1154/25

1.Hilal Ahmad Shah and ors

….Petitioners.

Through: **Petitioners are present in person along with Mr. Alyas Ahmed, Advocate.**

v.

UT of Jammu and Kashmir
Through Station House Officer
P/S Ganderbal and anr

….Respondents.

Through: **Mr. Waseem Gul, GA for R-1**
Mr. Abbas Lodhi for R-2

CORAM : HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

O R D E R
02.09.2025

1. Through the medium of the instant petition, having been filed under and in terms of the provisions of Section 528 of ***Bharatiya Nagarik Suraksha Sanhita, 2023*** (hereinafter referred to "BNSS" for short), corresponding to Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to the Code for short) (now repealed), petitioners have sought the quashment of the FIR bearing No. 179/21 dated 20.03.2024, registered with the police station Ganderbal, U/ss 354-A 34, 506 IPC, against them along with subsequent proceedings, pending before the Ld. Additional Special Mobile Magistrate, Ganderbal, on the main grounds that the complainant/respondent No.2 and the accused-petitioners 1 to 5 have amicably settled the dispute that had led to the registration of the aforesaid case FIR, in connection whereof they have also executed written compromise dated 27.09.2025; that they have placed on record copy of the compromise to their petition; that they could not compound the case FIR before the police concerned for want of no competence with the police/investigating agency; that the petitioners and respondent No.2/complainant are having cordial relation with themselves since

long and the continuance of the criminal proceedings is likely to badly prejudice their relationship.

2.All the Petitioners and respondent No.2/complainant are present before this court in person along with their learned counsels. The copy of Compromise Deed as recorded, is also annexed to this petition as annexure -II. Their statements have been recorded.

3. I have perused the petition and the copies of the documents especially compromise deed having been entered into by the petitioners and the respondent No.2/complainant.

4. I have heard the submissions of the learned counsel for the respondent No.2/complainant. Learned state counsel Mr. Waseem Gul, GA, submitted that the matter may be dealt with in accordance with the law.

5. In the backdrop of the aforementioned discussion this court is of the considered opinion that it may meet the ends of justice, in case the petition is allowed and the impugned FIR No. 179 of 2021 registered with police station Ganderbal U/ss 354-A, 34 & 506 IPC is quashed alongwith the subsequent proceedings, pending before the learned Additional Special Mobile Magistrate, Ganderbal, as the same is likely to facilitate the maintenance of cordial relations between the petitioners and respondent No.2/complainant. The offense(s) of the FIR are personal in nature and do not have any far-reaching social or other sensitive consequences.

6. Although this Court is of the opinion that an FIR cannot be generally and in routine manner allowed to be quashed in exercise of the powers under Section 528 of BNSS corresponding to Section 482 of the Code on the main ground that the parties have settled their controversy that had become the cause of occurrence, yet exceptional ground appears to be made out in the opinion of the Court, in the facts and the circumstances of the case, for invoking its extraordinary powers under Section 528 of BNSS to quash the FIR in question.

7. The provisions of Section 359 of the BNSS corresponding to Section 320 of the Code do not restrict but limit and circumvent the powers of this Court under Section 528 of the BNSS corresponding to Section

482 of the Code regarding quashment of FIR's and criminal proceedings for the sake of the society at large which is the real beneficiary of the criminal justice delivery system.

8. This Court in its opinion feels fortified with an authoritative judgment of the Hon'ble Apex Court cited as "**Gopal Kumar B. Nar Vs. CBI (2014) 5 SCC 800"** in which it has been held that *"though quashment of non-compoundable offence under Section 482 CrPC, following a settlement between the parties would not amount to circumvention of Section 320, but such power has to be exercised with care and caution and would depend on facts of each case."*

9. The Hon'ble Supreme Court in **"Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and Ors vs State of Gujarat and Anr. (2017) 9 SCC 641",** has considered the aspect of the invocation of the inherent powers by the High Courts under Section 528 of the BNSS corresponding to Section 482 of the Code and was pleased to lay down some broad governing principles for invocation of such power by the High Courts. The relevant portions of the judgment are reproduced as under for the sake of convenience:

> *"Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice.*
> *The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:-*
>
> *(i) "Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;*
>
> *(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed*

by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) *There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between*

> *private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance".*

10. It is also needful to reproduce the relevant portion of the law laid down by Hon'ble Supreme Court in "***Kapil Gupta Vs. State (NCT of Delhi) and Anr 2022 15 SCC 44",*** on an appeal, impugning the judgment and order dated 28.09.2021 passed by the learned Single Judge of the High Court of Delhi thereby dismissing the criminal petition, which was filed for quashing the criminal proceedings, as under:-

> *(i) "In present case, consent given by respondent No. 2 for putting an end to proceeding was voluntary and without any coercion and duress. Respondent No. 2, in order to live in peace, wants to bring an end to criminal proceedings.*
>
> *(ii) Though court should be slow in quashing proceedings wherein heinous and serious offences are involved. High Court is not foreclosed from examining as to whether there exists material for incorporation of such offences or as to whether there is sufficient evidence which if proved would lead to proving for offence charged with.*
>
> *(iii) Court has also to take into consideration as to whether settlement between the parties is going to result in harmony between them which may improve their mutual relationship.*
>
> *(iv) It is also relevant to consider as to what is the stage of proceedings. If application (for quashing proceedings) is made at belated stage wherein evidence has been led and matter is at stage of arguments or judgment, Court should be slow to exercise power to quash proceedings. However, if such application is made at initial stage before commencement of trial, said factor will weight with Court in exercising its power.*
>
> *(v) In present case, facts and circumstances are peculiar. Respondent 2 is young lady of 23 years. She feels that going through trial in one case, where she is complainant, and in other case, wherein she is accused, would rob prime of her youth. She feels that if she is made to face trial rather than getting any relief, she would be faced with agony of undergoing trial.*

(vi) *In both aforesaid cases, though charge-sheets have been filed, charges are yet to be framed and as such, trial has not yet commenced. It is further to be noted that since Respondent 2 herself is not supporting prosecution case, even if criminal trial is permitted to go ahead, it will end in nothing else than acquittal. If request of parties is denied, it will be amounting to only adding one more criminal case already overburdened criminal courts.*

(vii) *In that view of the matter, though in heinous or serious crime like rape, Court should not normally exercise powers of quashing proceedings, in peculiar facts and circumstances of present case and in order to give succour to respondent 2 so that she is saved from further agony of facing two criminal trials, one as victim and one as accused, present is a fit case wherein extraordinary powers of Supreme Court be exercised to quash criminal proceedings.*

(viii) *In that view of the matter, proceedings in criminal cases arising out of both aforesaid FIR's are quashed and set aside."*

11. This Court in its opinion also feels fortified with the authoritative judgments of the Hon'ble Apex Court cited as ***"Gyan Singh Vs. State of Punjab (2012) 10 SCC 303 and "Narender Singh Vs. State of Punjab (2014) 6 SCC 466***", the relevant paras of which are reproduced as hereunder for the sake of convenience:

"Gian Singh Vs. State of Punjab (2012) 10 SCC 303"

61. "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 proceedings."

"Narender Singh Vs. State of Punjab (2014) 6 SCC 466"

29. "In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power 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: 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 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."

12. Having regard to the amicable settlement of the dispute between the petitioners/accused and the complainant/respondent No. 2, the continuance of the criminal proceedings sought to be quashed appears to be a futile exercise, for just completing the procedure for recording an order of acquittal. In its opinion, this Court is fortified with the law laid down by Hon'ble Supreme Court in, ***(i) Satesh Nehra V/S Delhi Administration 1996 (III) Crimes 85 SC; (ii) Madan Mohan Abott Vs. State of Punjab AIR 2008 SC 1969' and (iii) Jugdish Chananan and ors Vs. State of Haryana and anr. AIR 2008 SC 1968.*** Relevant Paras of the referred judgments deserve a needful mention as under:

"Satesh Nehra V/S Delhi Adminstration 1996 (III) Crimes 85 SC."

"But when the judge is fairly certain that there is no prospect of the case, ending in conviction, the valuable time of the court should not be wasted for holding a trial only for purpose of formally completing the procedure to pronounce the conclusion at a future date. Most of the Sessions Courts in India are under heavy pressure of work load. If the Sessions Judge is almost certain, that the trial would be only an exercise in futility or sheer wastage of time, it is advisable to truncate or swap the proceedings."

"(ii) Madan Mohan Abott Vs. State of Punjab, AIR 2008 SC 1969"

"In disputes where the question involved is of a purely personal nature the court should ordinarily accept the terms of compromise even in criminal proceedings

keeping the matter alive with no possibility of a result in favour of the prosecution in a luxury, which the courts, grossly overburdened as they cannot afford and that the time so save can be utilized in deciding more effective and meaningful litigation."

"(iii) JugdishChananan and ors Vs. State of Haryana and anr AIR 2008 SC 1968"

"In the light of the compromise it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transaction that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise we accordingly allow the appeal and quash FIR 83/12.3.2001 P/S City Sonapat and on subsequent proceedings."

13. The Hon'ble Apex Court has permitted the compounding of the offences even at the appellate stage having regard to the mutual settlement between the contesting parties and the nature of the offences involved in the proceedings being personal in nature "[Mulukri Sira Prassad vs. State of Andra Pradesh 2001 (4) SC 254, Khursheed and Anr. vs. State of UP and anr. 2007 and Ab. Sattar Vs. State of M.P AIR 1981 SC 1775]."

14. Allowing the complainant/victim and the accused in a criminal proceeding at any stage of investigation, trial or appeal to seek quashment of the proceedings or the compounding of the offences even in cases where commission of non-compoundable offences of personal nature not involving public/social aspect is alleged, on the basis of amicable settlement, is not likely to prove detrimental to the scope and object of the provisions of Section 359 of the BNSS corresponding to Section 320 of the Code. Such an approach is likely to put an end to some further apprehended litigation of both civil and criminal nature and to allow the parties to have a peaceful and cordial relation, besides saving the precious time of the Criminal Courts being already grossly over-burdened as the continuance of such criminal proceedings is likely to prove a futile exercise only for the purpose of completing the procedure for recording an order of acquittal at the end. Provisions of Section 359 of the BNSS corresponding to Section 320 of the Code do not restrict but only limit the powers of this Court under Section 528 of BNSS corresponding to Section 482 of the Code so that the extraordinary powers are used only in exceptional

circumstances to meet the ends of justice. Provisions of Section 528 of BNSS of section (482 of the Code) have an overriding affect and are not to be read as subject to the provisions of Section 320 of the Code (359 of BNSS). The criminal proceedings, involving heinous offences of anti-social nature or offences under special penal statutes do not qualify for being quashed/compounded in exercise of the powers under Section 528 BNSS of the Code (482).

15. Criminal litigation between near relatives or co-sharers more often originates from the civil/matrimonial disputes and as such directing the quashment of proceedings by invoking the inherent powers under the BNSS/Code, in such matters of personal nature not involving the commission of any heinous offence is likely to meet the ends of justice.

16. For the foregoing discussion, the petition is allowed and the impugned case FIR bearing No. 179 of 2021 dated 20.03.2024 registered with Police Station Ganderbal U/ss 354-A, 34 & 506 IPC is quashed along with subsequent proceedings, pending before the learned Additional Special Mobile Magistrate, Ganderbal.

17. Disposed of.

(Mohd. Yousuf Wani)
Judge

Srinagar
02/09/2025
Ayaz Secy.