

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1011 OF 2015

Sau.Ashwini @ Rani Youraj Akurde	Applicant
versus	
The State of Maharashtra and another	Respondents

Mr.Anand Shivaji Patil for Applicant.
Ms.M.H.Mhatre, APP, for Respondent no.1.
Mr.Abhijeet M. Adagul for Respondent no.2.

**CORAM : A.S.OKA AND P.D.NAIK, JJ.
DATE : 30th March 2016**

ORAL JUDGMENT - (Per : A.S.Oka, J.) :

1. Heard learned counsel for the Applicant. The Applicant is the wife and second Respondent is the husband.

2. The Applicant-wife has been convicted for the offence punishable under Section 307 of Indian Penal Code ('IPC') by judgment and order dated 2nd June 2012 passed by the Assistant Sessions Judge, Kolhapur. The victim of the offence is the second Respondent who had set criminal law in motion. The Applicant has been sentenced to undergo rigorous imprisonment for six years and to pay fine of Rs.1,000/-. An appeal preferred by the Applicant being Criminal Appeal No.101 of 2012 against the orders of conviction is pending before the Sessions Court at Kolhapur.

3. What is pointed out in this petition is that pending the appeal in a petition for divorce filed by the second Respondent, the Applicant-wife and second Respondent-husband have amicably resolved their matrimonial dispute and have agreed to apply for divorce by mutual consent. The petition is pending in the Family Court at Kolhapur.

4. The submission of learned counsel for Applicant is that criminal proceedings were initiated as a result of on-going matrimonial dispute between the Applicant and the second Respondent. He submitted that as there is a complete settlement between the parties to the marriage, this is a fit case to exercise power under Section 482 of the Code of Criminal Procedure, 1973 ('Code') to quash the criminal proceedings. He submitted that the Apex Court has repeatedly held, especially in the case of offences arising out of matrimonial disputes, that an endeavour shall be made by the Courts to ensure that the settlement in the matrimonial disputes is given full effect, if necessary, by quashing the pending criminal proceedings. His submission is that the Apex Court has repeatedly held that in case of criminal proceedings arising out of matrimonial disputes, on settlement of all the disputes, the proceedings can always be quashed by exercising the power under Section 482 of the Code. He invited our attention to the observations made by the Apex Court in case of **Narinder Singh**

and others Vs. State of Punjab and another¹. He, therefore, urged that this is a fit case where this Court can exercise extraordinary power conferred on it under Section 482 of the Code for quashing the proceedings, though there is already conviction of the Applicant, especially when the Applicant and second Respondent have agreed to resolve all the subsisting disputes between them. He urged that if criminal proceedings are not quashed, the settlement which is filed on the record of the Family Court will be frustrated.

5. Learned counsel for the Applicant relied upon observations made by the Apex Court in paragraphs 29.2 and 29.4 in *Narinder Singh's case (supra)*. He also pointed out the observations made in paragraph 32 of the said decision. He submitted that if circumstances are extraordinary, this Court is not powerless to exercise the jurisdiction under Section 482 of the Code. He submitted that in the facts of this case, the situation is extraordinary, which calls for intervention by this Court by exercising power under Section 482 of the Code. He submitted that if power is exercised by this Court, the compromise between the Applicant and second Respondent will be implemented so that both of them can start living a new life.

6. We have given careful consideration to the submissions. As far as the power of this Court under Section

¹ (2014)6-SCC-466

482 of the Code is concerned, it is well settled that it is a discretionary power. The power of this Court under Section 482 of the Code has to be exercised sparingly and with circumspection. The remedy under Section 482 of the Code is not available as a matter of right.

7. In the present case, the exercise of the said power is sought on the basis of private settlement between the Applicant and second Respondent. The legal position as regards the exercise of the power under Section 482 of the Code on the basis of settlement is laid down by a three Judge Bench of Apex Court in case of **Gian Singh Vs. State of Punjab and another**². It will be necessary to make a reference to what is held by the Apex Court in the said decision. Paragraphs 52 to 54 of the said decision read thus :

"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the code.

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

² (2012)10-SCC-303

secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the 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."

8. In paragraph 53, the apex Court has observed that it is equally well settled that 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. The Apex Court reiterated that power should be exercised very sparingly. In paragraph 55, the Apex Court reiterated what is held earlier with regard to the exercise of power under Section 482. It is held that the power possessed by the High Court under Section 482 of the Code is of wide amplitude, but is required to be exercised with great caution and circumspection. Though the Apex Court observed that there cannot be a straight jacket formula regulating the power under Section 482 of the code, certain guidelines have been laid down by the Apex Court where exercise of power under Section 482 is sought on the basis of settlement between parties. Paragraph 61 incorporates the said guidelines, which reads thus :

"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, (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.** But the criminal cases having overwhelmingly and predominatingly 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. In this category of cases, the High court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

(emphasis added)

A perusal of paragraph 61 shows that the Apex Court has divided the cases into two categories. One category is of heinous and serious offences which are not of private nature and which have a serious impact on the society. The second category is of criminal cases having overwhelming and predominatingly civil flavour which includes offences arising out of commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. As far as second category is concerned, the Apex Court has observed that the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice. If the entire judgment is read, it is apparent that in the case of *Gian Singh (supra)*, the Apex Court was dealing with criminal proceedings which were pending before the Trial Court in which there was no conviction.

9. Now, we turn to the decision of the Apex Court in the case of *Narinder Singh and others*. Here, the Apex Court was

dealing with an application filed under Section 482 of the Code for quashing the offence alleged under Section 307 of IPC on the ground of settlement. In the said decision, the Apex Court reiterated that the offence under Section 307 of IPC falls in the category of heinous and serious offence and is generally treated as a crime against the society. However, in paragraph 26, the Apex Court observed that only because FIR/charge sheet incorporates a charge under Section 307 of IPC, that by itself need not be a ground to reject the petition under Section 482 of the Code. Paragraph 26 reads thus :

"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the Court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under Section 482 of the code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely, whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used, etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessarily included in the charge-sheet, the Court can

accept the plea of compounding of the offence based on settlement between the parties."

(emphasis added)

10. In paragraph 27, the Apex Court observed that timing of settlement would also play a crucial role. If settlement is arrived at immediately after the alleged commission of the offence when the matter is still under investigation, the High Court can be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. The Apex Court observed that when charge-sheet is submitted but charge has not been framed, the High Court may exercise discretionary jurisdiction. But when charge sheet is placed before the Court, it becomes bounden duty of the Court to go into the said final report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. Thus, the Apex Court was dealing with a case which at a pre-trial stage. What is material is paragraph 28 which reads thus :

"28. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial Court. Obviously, such cases are those where the accused persons have been found guilty by the trial Court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial Court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet."

(emphasis added)

According to us, law laid down by paragraph 28 in *Narinder Singh (supra)* does not permit this Court to exercise power of this Court under Section 482 of the Code, as in the present case, the learned Assistant Sessions Judge has already convicted the Applicant for the offence punishable under Section 307 of IPC. In paragraph 29, the law on the point is summed up by the Apex Court in the case of *Narinder Singh (supra)*, wherein it is reiterated that the offence under Section 307 of IPC would fall in the category of heinous crimes. Even in a case where charge sheet is filed, the Apex Court has observed that when offence under Section 307 is alleged, it is bounden duty of the Court to examine the material and evidence collected which is placed on record along with charge sheet and then to take a view whether there is possibility of conviction under Section 307 of IPC. In this case, there is no occasion to consider whether there is a possibility of conviction of the Applicant under Section 307 as she is already convicted.

11. In view of the law laid down by the Apex Court in the case of *Gian Singh (supra)* and law laid down in the case of *Narinder Singh (supra)* and particularly in paragraph 28 of the case of *Narinder Singh (supra)*, we are of the opinion that in view of the conviction of the Applicant under Section 307 of IPC, this is not a fit case where the power can be exercised under Section 482 of the Code for quashing the criminal proceedings on the ground of settlement.

12. We have already made detailed reference to the view taken by a three Judge Bench of the Apex Court in *Gian Singh (supra)* and in particular paragraph 61 thereof, we have already noted that in the second category of cases, the Apex Court has held that power to quash the criminal proceedings can be exercised when possibility of conviction is remote and bleak. In the present case, that contingency will not arise as the case has already culminated into an order of conviction, under the judgment and order of learned Assistant Sessions Judge. Therefore, by no stretch of imagination, in this case, we can record a finding that possibility of conviction is remote.

13. In the present case, substantive appeal against the order of conviction and sentence is pending. When the Applicant has availed of a statutory remedy, in criminal jurisdiction under Section 482 of the Code, it will not be appropriate for this Court to go into the findings recorded by the Assistant Sessions Judge and to record a fresh finding one way or the other on the guilt of the Applicant. This exercise will have to be done in the pending appeal.

14. For the reasons which we have recorded above, we are not inclined to entertain this application under Section 482 of the Code.

15. Considering the large pendency of criminal matters in most of the Courts in the State, normally this Court is reluctant to fix a time bound schedule for disposal of cases. The reason is that concerned Court has to decide whether priority deserves to be given to a particular case pending before it considering the extent and the nature of pendency before that particular Court. In the present case, there was a matrimonial dispute between the Applicant and the second Respondent. Though we cannot examine that contentions on merits, the case made out in the application is that the subject matter of the criminal proceedings was an outcome of the matrimonial dispute. From the contentions raised by the Applicant and the second Respondent, it appears to us that there is a settlement in the matrimonial dispute. Considering this extraordinary feature, we are sure that the learned Sessions Judge before whom the appeal is pending, will give out of turn priority to the hearing of the appeal of the year 2012. On application being made by the Applicant in the pending appeal, learned Sessions Judge will consider of giving out of turn priority to the hearing of pending appeal, especially when settlement is already filed before the Family Court at Kolhapur.

16. We make it clear that we have not made any adjudication on the merits of the pending appeal and all contentions of parties in the pending appeal are kept open.

17. Hence, we pass following order :

(a) Criminal Application No.1011 of 2015 is rejected;

(b) It will be open for the Applicant to file an application before the learned Sessions Judge before whom Criminal Appeal No.101 of 2012 is pending for giving out of turn priority to the disposal of the appeal. If such an application is made by the Applicant, considering the observations which we have made in this judgment and order, the learned Sessions Judge will give necessary priority to the hearing of the appeal.

(c) All contentions on merits of the pending appeal are kept open.

(PD.NAIK, J.)

(A.S.OKA, J.)

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