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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.10450 of 2016
Date of Decision: 08.05.2017

Jagwati and others

.....Petitioners

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Neeraj Gupta, Advocate
for the petitioners.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

RAJ MOHAN SINGH, J. (Oral)

[1]. Notice of motion was issued on 28.03.2016. Mr. Ankit Aggarwal, Advocate appeared on behalf of the private respondents. The factum of compromise was not denied. Thereafter, learned counsel for the private respondents did not prefer to appear in the case.

[2]. Petitioners have filed the present petition under Section 482 Cr.P.C. for quashing of FIR No.585 dated 30.11.2014 registered under Sections 147, 148, 149, 323, 325, 326 IPC and Section 307 (added later on) at Police Station Kherki Daula, District Gurgaon (Annexure P-1) and entire subsequent proceedings undertaken in pursuance thereof on

the basis of compromise.

[3]. The FIR was registered at the instance of Bimla Devi wife of Mam Raj with the allegations that when Narender went to see the plot, then sister-in-law (Devrani) of the complainant i.e. petitioner No.1 told Narender that she is the owner of entire plot and Mam Raj has no plot in existence. This fact was informed by Narender to the complainant on telephone and after receiving the said information, the complainant, her husband Mam Raj and son Harish went to village Kakrola at about 11.30 a.m. in the car. As soon as they got down from the car, sister-in-law Jagwati, her son Bittu, Monu and Mahesh were present there along with 4-5 other persons. They were duly armed with iron rods and lathis. Bittu hit husband of the complainant Mam Raj with iron rod on the left side of his head. Husband of the complainant fell down. Bittu also inflicted another blow with iron rod on the head of Harish which landed on the left side of his head. Thereafter, Monu hit Harish with lathi blow on his head. Resultantly, Harish got deep injuries. Mahesh assaulted the complainant with lathi and the complainant caught the same. Jagwati gave beatings to the complainant with fists and slaps and other persons also gave beatings to the complainant.

[4]. Initially, the case was registered for the offences under Sections 147, 148, 149, 323, 325, 326 IPC. Thereafter,

offence under Section 307 IPC was added on the basis of opinion given by the doctor on 08.12.2014 finding that the injury on the person of Mam Raj was dangerous to life.

[5]. Learned counsel for the petitioners submitted that the offence in terms of Section 307 IPC was added at a subsequent stage on the basis of opinion of the doctor which has not specified that the injury caused is sufficient to cause death in ordinary course of nature. The words 'dangerous to life' and 'endangering life' are to be read in the context of Section 320 Eightly of the Indian Penal Code. Every hurt endangering life would be grievous hurt and in order to constitute an offence under Section 307 IPC, the said injury should be opined to be dangerous to life and is sufficient to cause death in ordinary course of nature. Since, there was no such opinion by the doctor, therefore, learned counsel for the petitioners submitted that the injury on the person of Mam Raj cannot be read beyond the injury under Section 326 IPC. Out of total 17 prosecution witnesses, 8 witnesses have been examined.

[6]. Both the parties are blood relations. Though the accused party also received some injuries but no cross-version was recorded.

[7]. Learned counsel on the strength of **Pritam Singh and another vs State of Punjab, 2010(3) R.C.R. (Criminal)**

395 submitted that offence under Section 307 IPC is not attracted in any case and therefore, both the parties can compound the offence with the leave of the Court on the basis of compromise. The compromise has been effected due to intervention of the elders and respectable persons of the village and the said compromise would bring peace and congenial atmosphere between both the parties. Since both the parties are close relatives, therefore, the compromise would bring an ever lasting tool in hand of both the parties to bring peace and tranquility at the places of their residence. Mam Raj is uncle of Bittu, Monu and Mahesh. The complainant is real aunt of aforesaid Bittu, Monu and Mahesh. Harish is real cousin of Bittu, Monu and Mahesh. Jagwati is the mother of Bittu. Dispute was with regard to property which has been settled amicably between the parties.

[8]. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in **Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47; Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604**

and **State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489**, has summed up the controversy in **State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and others, 2003(2) RCR (Crl.) 860 (SC)**. The legal position summed up in the said judgment is in the following manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227

could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

[9]. Full Bench of this Court in **Kulwinder Singh and**

others vs. State of Punjab and another, 2007(3) RCR (Crl.)

1052 considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised *Ex-Debitia, justitia* to prevent abuse of process of Court.

[10]. In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of commercial, financial, mercantile and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise.

[11]. In **Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.) 543**, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in

the following manner:-

“57. 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 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 proceeding.”

[12]. The quashing of criminal proceedings in an offence under Section 307 IPC came up for detailed discussion before the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another, 2014(2) RCR (Crl.) 482**. After due consideration the Hon'ble Apex Court formalised the issue of compounding of offences under Section 307 IPC to say that it is an offence against society and is non-compoundable, but in certain cases the High Court would be guided to give adequate

treatment to the settlement between the parties in exercise of inherent powers under Section 482 Cr.P.C. Following principles were laid down in para 31 of the judgment:-

“31. 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:

(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 pre-dominantly 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.”

[13]. In nutshell each case has to be considered on its own merits. While exercising inherent powers, High Court has to examine whether possibility of conviction is bleak and continuation of proceedings would put the accused to great oppression and prejudice and would result in futility. Offence under Section 307 IPC falls under the category of heinous offence and generally it is to be treated offence against the State/society and not an individual offence. At the same time High Court would not base its decision merely because offence under Section 307 IPC is mentioned in the FIR or in the charge. It is still open before the Court as to whether insertion of offence under Section 307 IPC is based on evidence or it is just for the sake of incorporation in the FIR.

In a way, Court is empowered to look into the nature of injury sustained by the victim, whether such injury is inflicted

on the vital parts of the body, the nature of weapon used in the crime, medical evidence brought on record in respect of injuries sustained by the victim, place of occurrence and stage of the case are the relevant factors on which this Court can examine as to whether there is strong possibility of conviction or the chances of conviction are bleak and remote. In case of quashing of criminal prosecution arising out of offence under Section 307 IPC, following facts are necessary to be considered for arriving at the conclusion i.e.:-

- (i) Whether offence would remain an offence against State/society or it can be diluted, if weapon used is not deadly weapon,*
- (ii) Place where occurrence took place is not publicly exposed so as to exhibit action in open before the society.*
- (iii) Medical opinion is such that it aggravated with the passage of time and ultimately brought the offence within the fold of 307 IPC, and*
- (iv) the offence is the outcome of any matrimonial discord between the parties.*

Consideration of principles highlighted and guidelines framed reveal that the Court has to weigh the culpability on the aforesaid criterion and if the alleged act can be segregated to mean that it was not in public view nor it was exhibited in public view with deadly weapon and if the medical evidence is also based on opinion, evidence highlighting happening or nonhappening of particular event then the offence under

Section 307 IPC can be considered for compounding on the basis of compromise.

[14]. In view of aforesaid discussion, I am of the view that the timing of the settlement between the parties is at the crucial stage. The applicability of the offence under Section 307 IPC is prima-facie found to be on questionable note, therefore, I am of the view that the parameters laid down in **Narender Singh's case (supra)** can be applied to the present case and both the parties can be allowed to get the offence compounded with leave of the Court.

[15]. Taking into consideration totality of facts and circumstances, this Court is of the view that the case can be considered for quashing of FIR along with subsequent proceedings arising therefrom on the basis of compromise. Resultantly, FIR No.585 dated 30.11.2014 registered under Sections 147, 148, 149, 323, 325, 326 IPC and Section 307 (added later on) at Police Station Kherki Daula, District Gurgaon (Annexure P-1) and all the subsequent proceedings arising therefrom, are hereby quashed.

[16]. Petition stands disposed of.

May 08, 2017

jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No