

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1654 of 2017

1. Rajesh Agrawal S/o Rameshwar Aged About 28 Years R/o Station Road , Sakti , Police Station Sakti District Janjgir Champa Chhattisgarh.
 2. Rekhchand Agrawal S/o Rameshwar Aged About 34 Years R/o Station Road , Sakti , Police Station Sakti District Janjgir Champa Chhattisgarh.
- **Petitioners**

Versus

1. State of Chhattisgarh Through The Station House Officer, Police Station Sakti, District Janjgir Champa, Chhattisgarh.
 2. Jagbai W/o Late Anandram Aged About 70 Years R/o Akhrabhantha Sakti Police Station Sakti District Janjgir Champa Chhattisgarh.
 3. Anil Kumar Markam S/o Late Anand Ram Aged About 42 Years R/o Akhrabhantha Sakti Police Station Sakti District Janjgir Champa Chhattisgarh.
- **Respondents**

For Petitioners	:	Mr. Kamlesh Kumar Pandey, Adv.
For Respondent No.1/State	:	Mr. S.K. Mishra, Panel Lawyer
For Respondent No.2 & 3	:	Mr. Laxmi Tondey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05.01.2018

1. This petition is against the order dated 07.11.2017 passed by the First Additional Sessions Judge, Sakti, Distt. Janjgir Champa in Criminal Appeal No. 59/2017 whereby the application filed by legal heirs of the complainant as also the accused Rajesh Agrawal and Rekhchand Agrawal u/s 320(4) (b) of the Code of Criminal Procedure for compounding the offence under sections 186/34, 353/34, 332/34 IPC has been

rejected.

2. Brief facts of the case are that on a report being filed by one Anand Ram who was working as 'Nayak" in the Bank, a case was registered against the present petitioners under sections 186, 452, 353, 332, 294 read with section 34 of IPC. After completion of investigation, the charge sheet was submitted before the trial Court and the petitioners were being prosecuted in Criminal Case No.1391/2005. During the pendency of said criminal case, complainant Anand Ram died and thereafter his legal heirs namely Jagbai, wife of Anand Ram and Anil Kumar Markam has filed application u/s 320(4) of Cr.P.C., before the trial Court for compounding the offences. The learned trial Court after recording the statements of respondents 2 & 3 has acquitted the accused/petitioners for the offences punishable under sections 294 of IPC on the basis of the compromise. However, the other offences u/ss 186, 353, 332 read with section 34 of IPC were continued. Subsequently by judgment dated 16.08.2017 the petitioners were convicted u/s 186/34 of IPC and directed to pay a fine of Rs.500/- each and under sections 353/34 and 332/34 of IPC, the petitioners were convicted and sentenced to undergo R.I., for 3 months each respectively and to pay a fine of Rs.500/- each. Against the said judgment the petitioners filed appeal before the First Additional Sessions Judge, Sakti, Distt. Janjgir Champa bearing Cr.A.No.59/2017 wherein the jail sentence of the appellants/petitioners were suspended. During the pendency of the said appeal the legal

heirs of complainant namely Jagbai and Anil Kumar Markam (respondents 2 & 3 herein) have jointly filed application u/s 320(4)(b) of Cr.P.C., seeking permission to compound the offence wherein they have stated that they have compromised the matter and they do not want to prosecute the case against the petitioners, therefore, they may be acquitted for the offences punishable under sections 186/34, 353/34 & 332/34 of IPC. The said application was rejected by the appellate court vide order dated 07.11.2017. Hence this petition.

3. Learned counsel for the petitioners would submit that the dispute took place on a trivial dispute in the bank and the compromise has been effected between the legal heirs of the complainant and the petitioners and the complainant party have entered into compromise without fear and pressure or undue influence. He further submits that the complainant party do not want to further prosecute the case against the petitioners and in view of the compromise, the petitioners may be acquitted of the charges u/s 186/34, 332/34 & 353/34 of IPC.
4. Learned State Counsel and also learned counsel appearing on behalf of respondents 2 & 3 do not dispute the fact that the compromise has been effected.
5. A perusal of the record would show that complainant Anand Ram was working as clerk in the State Bank of India, Sakti and on 13.06.2005 when he was discharging his duties the petitioners came to the Bank and asked for more vouchers

and on denying to supply extra vouchers, the accused abused and thrashed him in the Bank, on which, a report was filed by the complainant. During the course of trial, complainant Anand Ram has died and the statements of his legal heirs namely Jagbai and Anil Kumar Markam were recorded and the trial Court convicted and sentenced the petitioners as above. Thereafter they preferred appeal wherein respondents 2 & 3 have categorically stated that after decision of the trial Court, they themselves volunteered to compromise the issue and the application seeking compromise was filed u/s 320(4) (b) of Cr.P.C., without fear and pressure or any undue influence and they do not want to prosecute any proceeding against the accused.

6. Reading of clause (b) of sub-section (4) of Section 320 of the Code of Criminal Procedure shows that when a person who would otherwise be competent to compound an offence under this section is dead, the legal representatives as defined in the Code of Civil Procedure, 1908 of such person may with the consent of the Court, compound such offence. Therefore, in the instant case, respondents 2 & 3 being legal representatives of the complainant are entitled to file application for compromise under the provisions of section 320(4)(b) of Cr.P.C.,
7. With respect to compounding the offence, Hon'ble the Supreme Court in *Gian Singh v. State of Punjab & Another reported in (2012) 10 SCC 303* has laid down the following principles :

“61. The position that emerges from the above discussion can be summarized 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.

8. Further, in case of ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors.*** in Criminal Appeal No.1723 of 2017 their Lordship again reiterated the view taken in case of ***Gian Singh*** (supra) and has laid down the following propositions :

“15. 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 recognizes 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.

9. Taking into consideration the statements of legal heirs of the victim and further especially considering the nature of allegations and the background of this case which shows that the incident happened in the Bank premises way back in the year 2005 where the quarrel took place on a trivial dispute of issuance of extra vouchers and further following the dictum

laid down by the Supreme Court that the interest of the society shall not be affected and in order to secure the ends of justice, I am inclined to quash the proceedings and set aside the conviction. Consequently the charges under sections 186/34, 353/34 & 332/34 against the petitioners are hereby quashed and they are acquitted of the charges. The judgment of conviction and order of sentence passed by the trial court is set aside. Accordingly, the petition is allowed.

**Sd/-
(GOUTAM BHADURI)
JUDGE**