

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3951 of 2015

Arising Out of PS. Case No.-202 Year-2013 Thana- BAIRIYA District- West Champaran

Mojahir Gaddi @ Mozahir Hussain son of Late Shabuddin Gaddi, Resident of village- Gadiyani Tola, P.S.- Bairiya, District- West Champaran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Amarendra Nath Verma, Adv
For O.P.	:	Mr. Akhilesh Kumar Sinha, Adv
For the State	:	Mr.J.Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-08-2019

Heard Mr. Amrendra Nath Verma, learned counsel appearing for the petitioner and Mr.Akhilesh Kumar Sinha, learned counsel appearing for the State.

2. The petitioner is one of the accused in connection with Bairiya P.S.Case No.202 of 2013 wherein the learned Chief Judicial Magistrate, Bettiah, West Champaran differed with the police report filed under Section 173 Cr.P.C. and took cognizance against the petitioner also for offences under Sections 341,323,324,307,504,379 and 302/34 I.P.C. It is worth to mention that the petitioner was not sent up for trial after investigation of the case, however, considering the material in the case diary, the learned Magistrate has differed with the police report.



3. According to FIR, for land disputes, the FIR named accused person including the petitioner variously armed came to the house of the informant and committed assault. There is specific allegation against the petitioner that he caused injury with Farsa at the head of Amin Gaddi, as a result whereof, Amin Gaddi died during course of treatment. The eyewitnesses of the occurrence including the wife of the deceased had supported the allegation that the petitioner had caused injury at the head of the deceased in their presence. Therefore, there was apparent material before the Magistrate to differ with the police report.

4. Learned counsel for the petitioner submits that there is case and counter case and for land dispute, both sides sustained injury in the occurrence of assault. Subsequently, both the parties have entered into a compromise and as a result of compromise, when some of the juvenile accused were facing enquiry before the Juvenile Justice Board, the wife of the deceased and other witnesses stated that due to darkness, they could not see as to who had assaulted to whom. Submission is that when there is bleak chance of conviction, the criminal prosecution would amount to abuse of the process of the Court and the Court should not hesitate to exercise power conferred under Section 482 Cr.P.C. Reliance



has been placed on the case of **Narinder Singh & Ors Vs. State of Punjab & Anr**, reported in **(2014) 6 SCC 466**.

5. In **Narinder Singh** Case (Supra), the Hon'ble Supreme Court summed up following principles for guidance to exercise the power under Section 482 Cr.P.C.;

“ (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 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.”

6. While laying down the aforesaid guidelines, the Hon’ble Supreme Court noted the words of caution in Item No.I that this power is to be exercised sparingly and with caution. In Item No.III, such a power is not to be exercised in those prosecution which involves heinous and serious offences like murder, rape, dacoity etc. In the present case, the petitioner is main



assailant of a murder case. The eye witnesses supported the allegation against the petitioner before the police as eye witness of the occurrence. No other accused is assailant of the deceased. The offence is not a compoundable offence. Since in this very case, the prosecution evidence has not started, hence, it cannot be predicted as to what the prosecution witness will depose before the Court during their evidence. They may be confronted with their earlier statement and trustworthiness of the witness shall be tested at the appropriate stage of the trial. Therefore, in my view, no case of quashing of FIR is there. Hence, this application has got no merit. Accordingly, it stands dismissed.

7. Since the matter is very old, the learned Trial Judge shall expedite the trial and the petitioner is directed to fully cooperate with the trial. If needed, the learned court below shall separate the trial of the petitioner because it has been informed that some of the accused are still absconding in this case.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	NA
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