

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 294 of 2019

Vinod Kumar Nagesh S/o Gorelal Sarthi Aged About 23 Years R/o
Village Kodar, Police Station Pali, District Korba Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Station House Officer, Police Station-Pali, District Korba Chhattisgarh.
2. Rajesh Kumar Paikra S/o Jaychand Paikra Aged About 27 Years R/o Village Batra, Police Station Pali, District Korba Chhattisgarh
3. Amar Singh Paikra S/o Guman Singh Paikra Aged About 27 Years R/o Village Dhondhipara, Police Station Pali, District Korba Chhattisgarh
4. Kranti Kumar S/o Hadarudas Panika Aged About 33 Years R/o Village Pulalikala, Police Station Pali, District Korba Chhattisgarh
5. Uttam Das S/o Bandhan Das Panika Aged About 28 Years R/o Village Bhadrpara, Balco, Police Station Balconagar, District Korba Chhattisgarh

---- Respondents

For petitioner	:	Mr. Dharmesh shrivastava, Adv.
For R 1/State	:	Mr. Vinod Tekam, Panel Lawyer
For R-2 to 5	:	Mr. C.P. Lahre, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

ORDER ON BOARD

16-9-2019

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the Criminal Case No. 167/2016 pending before the JMFC, Pali on the ground of compromise.
2. Petitioner and other co-accused were facing trial before the Court of JMFC, Pali. In that case complainants are respondents No. 2 Rajesh Kumar Panika, No. 3 Amar singh Paikra, No. 4 Kranti Kumar, No. 5 Uttam Das. Charges were framed against petitioner under Section 419, 420, 170 of the IPC. Petitioner was acquitted of the charge punishable under Section 419, IPC on the basis of compromise under section 320(8) of Cr.P.C. However, trial Court refused to give permission to compound the offence punishable under Section 420, IPC to petitioner and respondents No. 2 to 5. Now the petitioner is facing trial for the

offences punishable under Section 170, 420 of IPC.

3. Section 170 of IPC is not compoundable under Section 320, Cr.P.C.

4. Counsel for the respondent No.2 to 5 conceded that respondents No.2 to 5 and petitioner have arrived at compromise.

5. In **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303] in para 61, Hon'ble Supreme Court has observed and held as under:

“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, or (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 predominately 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.”

6. In **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, (supra), in para 29.1, Their Lordships summed up as under:

“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 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 the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly 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.

29.5. 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are 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/delicate 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 latter 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.

29.7. 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 to 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.”

again Their Lordships have had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions of this Court on the point, Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC 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.

(2) 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 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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 insofar as the exercise of the inherent power to quash is concerned.

(8) 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.

(9) 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

(10) There is yet an exception to the principle set out in Propositions (8) and (9) 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.”

8. In the matter of **State of Madhya Pradesh vs. Dhruv Gurjar and Another** [AIR 2019 SC 1106] Hon'ble Supreme Court held in para 16.1, which reads as under:-

“**16.1** However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 CrPC. From the impugned judgments and orders, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgments and orders passed by the High Court, it appears that the High Court has mechanically quashed the respective FIRs, in exercise of its powers under Section 482 CrPC. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in *State of Maharashtra v. Vikram Anantrai Doshi* [*State of Maharashtra v. Vikram Anantrai Doshi*, [(2014) 15 SCC 29] , the Court's principal duty, while exercising the powers under Section 482 CrPC to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the respective FIRs by the High Court in the present cases for the offences under Sections 307, 294 and 34 IPC and Section 394 IPC, Sections 11/13 of the M.P.D.V.P.K. Act and Sections 25/27 of the Arms Act respectively, and that too in exercise of powers

under Section 482 CrPC is just contrary to the law laid down by this Court in a catena of decisions.”

9. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Gian Singh** (Supra), **Narinder Singh** (Supra), **Prabat Bhai Aahir** (Supra) and **Dhruv Gurjar** (Supra) following legal principles emerge-

i. The Court while exercising the power under Section 482 of Cr.P.C., neither gives the permission for compounding an offence nor accept the compounding of offence.

ii. While exercising the power under Section 482 of the Cr.P.C., Court can quash FIR/charge sheet/proceedings in those cases where the offence(s) is/are not compoundable under the provisions of Section 320, Cr.P.C. and where matter has been amicably settled between victim/prosecutrix and accused, under following guidelines--

(a) To secure the ends of justice or to prevent abuse of process of any court;

(b) Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, which are not private in nature and have a serious impact on society, etc. cannot be fittingly quashed;

(c) Criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing;

(d) 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, to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to the abuse of process of law.

(iii) This power is to be exercised sparingly and with caution.

10. As per the direction of this Court, Additional Registrar (Judicial) recorded the statements of petitioner and respondent No.2 to 5. They stated in their statements that they have compromised the matter voluntarily without any fear or pressure, undue influence. Additional Registrar (Judicial) was satisfied regarding the identification of petitioner and respondent No.2.

11. Though Section 420 of IPC is compoundable with the permission of the Court but in the case in hand, JMFC, Pali refused to give permission to compound the offence to respondents No. 2 to 5. Thus, looking to this extra ordinary situation, this Court thinks that it is a fit case where powers under Section 482 of the Cr.P.C. can be extended to section 420 of IPC also.

12. Offences punishable under Sections 420 and 170, IPC are not heinous and serious offences of mental depravity, they have no serious impact on society. The possibility of conviction in the case in hand is remote and bleak and continuation of the criminal proceedings would put the petitioner to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal proceedings. To continue with the criminal proceedings or continuation of the criminal proceedings would tantamount to the abuse of process regarding petitioner. To secure the ends of justice the intervention of this Court is necessary under this Section. It is a fit case where Court must exercise the inherent powers vested to this Court under Section 482 Cr.P.C. regarding petitioner. In these circumstances and looking to the aforesaid Judicial precedents laid down by Hon'ble Supreme Court in the matter of **Gian Singh** (Supra), **Narindar Singh** (Supra), **Parbatbhai Aahir** (Supra), this Court quash the aforesaid criminal proceedings in Criminal Case No. 167/2016 pending before JMFC, Pali against the petitioner, in the interest of justice exercising the powers vested to this Court under Section 482 of Cr.P.C.

13. Instant CRMP is disposed of accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge