

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.1330 of 2017**

1. Prem Chand Dewani, Aged About -59 Years, S/o Late Chandumal Dewani,
2. Nitin Dewani, S/o Premchand Dewani, Aged about 26 years,
Both R/o Street No.7, Ankit Niwas, Govind Nagar, Rajatalab, Raipur, Tah. & Dist.-Raipur (CG)

---- Petitioners

Versus

1. Bharat Lal Athwani, S/o Late Udhodas Athwani, Aged about 51 years,
2. Diya Dewani @ Bhawna Athwani, D/o Bharat Lal Athwani, W/o Nitin Dewani, Aged about 26 years,
Both R/o Baradwar Road, Near Bari Mandir, Ward No.14, Sakti, P.S. & Tah. Sakti, Dist-Janjgir-Chapa (CG)
3. State of Chhattisgarh, Through-S.H.O. P.S.Sakti, Dist.-Janjgir-Champa (CG)

---Respondents

For Petitioners	:	Mr.Ravindra Sharma, Advocate
For Respondents No.1 and 2	:	Mr.Vaibhav Maheshwari, Advocate
For Respondent No.3	:	Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****17/05/2019**

1. The petitioners have filed this petition under Section 482 of the CrPC for quashment of criminal proceedings pending before the Judicial Magistrate First Class, Sakti, in Criminal Case No.263/2017 for offences under Section 292 of the IPC and Section 67 & 67A of the Information Technology Act, 2000 (hereinafter called as "IT Act 2000") read with Section 34 of the IPC.
2. Learned counsel for the petitioners would submit that petitioner No.1 is father-in-law and petitioner No.2 is husband of respondent No.2 and matter has been compromised between the parties. Even

otherwise, offence under Section 509 of the IPC has already been compounded with the leave of the trial Court, therefore, offences under Section 292 of the IPC and Sections 67 and 67-A of the IT Act 2000 be permitted to be compounded and be quashed.

3. Learned counsel for respondents No.1 and 2 would submit in the same lines and prayed for compounding the offences.
4. This Court has directed the petitioners and respondents No.1 & 2 to get their statements recorded. They have recorded their statements and both the parties have stated that they have settled their dispute amicably and they are not interested in prosecuting the matter further.
5. I have heard learned counsel for the parties and perused the statements of the parties recorded by the Additional Registrar (J.) in Cr.M.P.No.1324/2017.
6. The Supreme Court in the matter of **State of Madhya Pradesh v. Laxmi Narayan and Others**¹ considering the earlier decision i.e. **Gian Singh v. State of Punjab**² held as under:-

“31. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

- i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
- ii) such power is not to be exercised in those prosecutions which involved 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;

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim

and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

7. The Supreme Court in the matter of **Sharat Babu Digumarti v. Government (NCT of Delhi)**³ has held that the Information Technology Act 2000 being a special and latter legislation than IPC and Section 81 of the IT Act 2000 giving the IT Act over-riding effect, proceeding under Section 292 of the IPC cannot be carried out in such circumstances and proceeding under Section 67 and 67A of the IT Act 2000 and Section 292 of the IPC both cannot run together.
8. The Delhi High Court in the matter of **S.K.Sahani v. State and Ors.**⁴ permitted the offence under Section 292 of the IPC to be compounded. Similarly, the **Rajasthan High Court in the matter of Mahesh v. State of Rajasthan and Anr.**⁵ permitted the offences under Section 67 & 67A of the IT Act 2000 to be compounded. Similarly, the Punjab and Harayana High Court in the matter of **Seeratjot Singh @ Rana v. State of Punjab and others**⁶ permitted the offences under Section 67 & 67A of the IT Act 2000 to be compounded.
9. The Division Bench of the Bombay High Court in the matter of **Ankit Sushil Kumar Goyal v. State of Maharashtra and Anr.**⁷ permitted the offences under Section 66A, 66C and 67 of the IT Act 2000 to be compounded in exercise of jurisdiction under Section 482 of the

3 (2017) 2 SCC 18

4 MANU/DE/4170/2011

5 2016 SCC OnLine Raj 9125

6 2015 SCC OnLine P&H 11616

7 2013 All MR (Cri) 860

CrPC.

10. The Delhi High Court again in the matter of **Tarun Rana & Ors v. State & Anr.**⁸ permitted the offences under Section 66(1)/67 of the IT Act 2000 to be compounded in jurisdiction under Section 482 of the CrPC.

11. Reverting to the facts of the present case in light of judgments of the Supreme Court in the matters of **Laxmi Narayan** and **Gian Singh** (supra) and **Sharat Babu Digumarti** (supra) and in light of various judgments of four High Courts and further considering the statements of the parties that they have settled their dispute amicably as offences came to be registered between the parties who are closely related to each other and divorce by mutual consent has already been taken place between the parties on 6.2.2018 by order of the Family Court, they have made statements on oath and chances of conviction are bleak, offence under Section 509 of the IPC has already been compounded with the leave of the trial Court, prosecution of offence under Section 292 of the IPC and offences under Section 66 & 67 of the IT Act 2000 both cannot stand together as held by the Supreme Court in the matter of **Sharat Babu Digumarti** (supra), to secure the ends of justice, I hereby quash the criminal proceedings pending before the Judicial Magistrate First Class, Sakti in Criminal Case No.263/2017 against the petitioners. The CrMP is disposed of accordingly.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-