

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.3751 & 3756 of 2019
Crl.MP.Nos. 2342, 2343, 2347 & 2348 of 2019

Lakshmanan

... Petitioner in
Crl.O.P.No.3751 of 2019

1. Virapandi A. Raja @ Rajendran
2. P.Gousiga Boopathi
3. Parapatti Suresh @ Sureshkumar
4. Sekar
5. Deivalingam
6. Ramu @ Jim Ramu
7. Saravanan
8. Alagapuram John @ John Aloysius
9. Alagapuram Prakash @ Prakash
10. Alagapuram Murali @ Murali
11. Thathai Karthi
12. Narayanan
13. Sri Ranganathan
14. Balagurumoorthi

... Petitioners in
Crl.O.P.No.3756 of 2019

Vs.

1. The Inspector of Police,
Salem Central Crime Branch,
Salem.

2. K.R.Premnath ... Respondents in both petitions.

Prayer in both petitions: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash all the proceedings in S.C.No.465 of 2018 on the file of the learned Special Court for Politicians Cases (MP & MLA) at Chennai.

For Petitioners
in both petitions: Mr.P.Kumaresan

For Respondents
in both petitions

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.Senthil Murugan

C O M M O N O R D E R

These petitions have been filed to quash the proceedings in S.C.No.465 of 2018 on the file of the learned Special Court for Politicians cases (MP and MLA) at Chennai. The petitioner in Crl.O.P.No.3751 of 2019 is arraigned as 14th accused and the petitioners in Crl.O.P.No.3756 of 2019 are arraigned as 2 to 13, 15 and 16th accused.

2. The learned counsel appearing for the petitioners in both cases submitted that the complaint lodged alleging that the defacto complainant and his brother are running a jewellery shop in the name of Coimbatore jewelers at 1st Agraharam, Salem Town for the past seven years. They purchased a land ad measuring 12676 Sq.ft from one Mallikeshwary in the year 1993 by way of two registered sale deed in document Nos. 31/1993 dated 13.01.1993 and 119/1993 dated 30.01.1993, situated in between the Salem new bus stand main road and Angalamman colony. While being so, the first accused (deceased) compelled the defacto complainant and his brother to execute a sale deed in favour of the third accused in respect of 1267 Sq.ft., in the total extend purchased by them. The said land laid an access to the main road from Angalamman colony. They refused to sell the property and as such, the accused 3 to 7 threatened them with dire consequences. Further alleging that the accused persons threatened them that they would foisted false case against them as if they had received stolen jewels and that would be published in the news paper. On 06.10.2008, the accused persons had conspired together with intention to grab the said land and trespassed into the subject land with wooden log and also threatened the defacto complainant and his brother. Hence the defacto complainant/second respondent lodged complaint and registered in Crime No.41 of 2011 and charge sheet also filed for the offence under Sections 120(B), 147, 148, 447, r/w 109, 352, 352 r/w 109, 506(ii) r/w 109, 386, 386 r/w 109, 307, 307 r/w 109 IPC and Section 3(i) of TNPPDL Act, 1994. The learned Chief Judicial Magistrate, Salem have taken cognizance for the said offences in S.C.No.231 of 2018 and thereafter transfered to the Special Court for politicians cases (MP & MLA), Chennai and renumbered as S.C.No.465 of 2018.

2.1. The learned counsel appearing for the petitioners further submitted that the first accused died and in respect of the other accused persons on several occasions try to settle the above issue, because the first accused is no more. In view of the said development, the petitioners and the defacto complainant amicably settled their issues and decided to put an end to the criminal case. They also entered into joint compromise memo on 25.02.2019.

2.2. The learned counsel appearing for petitioners relied upon the judgments reported in (2014) 9 SCC 653 in the case of Yogendra Yadav and others Vs. State of Jharkhand and another and (2018) 10 SCC 472 in the case of Rajesh Sharma and others Vs. State of Uttar Pradesh and another and also (2018) 10 SCC 443 in the case of Social Action Forum for Manav Adhikar and another Vs. Union of India and others. Therefore, he prayed for quashment of the proceedings.

3. Per contra, the learned Additional Public Prosecutor submitted that the petitioners are the accused A2 to A16 in S.C.No.465 of 2018 and they are charged for the offences under Sections 120(B), 147, 148, 447, r/w 109, 352, 352 r/w 109, 506 (ii) r/w 109, 386, 386 r/w 109, 307, 307 r/w 109 IPC and Section 3(i) of TNPPDL Act, 1994. The first accused was then Minister and he is no more. The charges as against the accused persons are that they threatened the second respondent with dire consequences to his life and trespassed into the property belonging to the second respondent and committed very serious offence, using the power of the first accused. Though compromise entered into between the petitioners and the second respondent/defacto complainant, the entire proceedings cannot be quashed, since the offence involved in moral turpitude, grave and serious offence and it cannot be quashed, since it is harmful effect on society and it is not restricted to two individuals or groups. He relied upon the judgement passed by the Hon'ble Supreme Court in CrI.A.No.336 of 2019 in the case of the State of Madhya Pradesh Vs. Dhruv Gurjar and another. By citing this judgment he further submitted that while quashing the complaint or charge sheet on compromise memo, it has to be seen the previous antecedents of the accused persons and it is essential factors while exercising inherent powers under Section 482 of Cr.P.C. Therefore, he prayed for dismissal of this quash petition.

4. Heard, Mr.P.Kumaresan, learned counsel appearing for the petitioners in both cases and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.Senthil Murugan, learned counsel appearing for the second respondent.

5. There are totally 16 accused, in which the petitioners are A2 to A16. The first accused already died as such the charge as against him abated. The charges as against the petitioners are punishable under Sections 120(B), 147, 148, 447, r/w 109, 352, 352 r/w 109, 506(ii) r/w 109, 386, 386 r/w 109, 307, 307 r/w 109 IPC and Section 3(i) of TNPPDL Act, 1994 and the trial Court have taken cognizance for the said offences in S.C.No.465 of 2018. The allegations are that the second respondent/defacto complainant and his brother are running jewellery shop in the

name of "Coimbatore Jewelers" at 1st Agraharam, Salem Town for the past seven years and the said shop was established by their ancestors even before 60 years. They purchased a land ad measuring 12676 Sq.ft., from one Mallikeshwary by two registered sale deed dated 13.01.1993 and 30.01.1993 vide document Nos. 31/1993 and 1119/1993 respectively.

6. While being so, they were called by the first accused and compelled them to execute sale deed in respect of the part of the property ad measuring 1267 sq.ft in favour of the third accused for the purpose of laying an access road to the main road from Angammal Colony for the residents Angammal colony. They refused to sell the property as such the other accused persons A2 to A7 threatened them with dire consequences. Further alleged that A14 viz., S.Laxmanan, came to their shop and threatened them that he would foist false case as against them, as if they had received stolen jewelers and it would be published in newspapers. On 06.10.2008, when the second respondent and his brothers were leveling their land with JCB to construct a compound wall, the first accused along with other accused persons had conspired to grab the said property trespassed into their land and also threatened them with wooden log. Hence the second respondent lodged the complaint.

7. Thereafter the first accused died and in view of the subsequent development between the second respondent and the accused persons, they have settled the issues amicably to give quitous to this criminal case. Pursuant to the same, the petitioners and the second respondent/defacto complainant have entered into joint compromise memo dated 25.02.2019, which reads as follows :-

"1. It is humbly submit that the Defacto Complainant lodged a complaint before the first respondent and the same was registered as FIR in Crime No.41 of 2011 on the file of the Land Grabbing Cell (CCB) and the same was taken cognizance by the learned Chief Judicial Magistrate at Salem and the same was numbered as S.C.No.251 of 2014 and subsequently the case was transferred to the learned Speical Judge for Elected MP & MLA cases at Chennai, which is renumbered as S.C. No.465 of 2018 and the same is pending trial.

2. It is further submits that after the transfer of case to Chennai, the above named accused filed a quash application before this Hon'ble High Court and this Hon'ble Court was pleased to order notice to both the respondents including the

defacto complainant.

3. It is further submit that on receipt of the notice from this Hon'ble Court in the above mentioned quash application, the defacto complainant and his family members discussed and case to the conclusion that with those accused who are not present were charged along with A1 the then Minister from Salem and after the filing of charge sheet A1 died and now only the other accused 2 to 16 are facing trial in S.C.No.465 of 2018. On several occasions, defacto complainant and his family members after the death of A1 along with the present accused tried to settle the above issue because the main person who was named as A1 is no more and in view of the development, now both have finalized to give quietess to the above matter pending before the learned Special Judge for Elected MP & MLA cases at Chennai.

4. It is respectfully submitted that in pursuant of the above discussions defacto complainant and the accused 2 to 16 at Salem mutually agreed on oral terms, hence both completely decided to put an end and settle the issued by giving quietess to the above case and also hereby decided to withdraw the complaint.

Therefore, it is prayed that this Hon'ble Court may be pleased to allow the quash applications and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice"

The said Joint Memo of Compromise has been filed before this Court, signed by the petitioners and the second respondent and also attested by their respective counsel. All the parties are present and identified by their respective counsel and the first respondent. In order to identify the respective parties, they have also produced the copies of the Aadhaar Card are made part of the record. This Court also enquired both the parties and satisfied that the parties have come to an amicable settlement between themselves.

8. Now, the point for consideration is that whether the offence punishable under Section 307 of IPC can be quashed on compromise?

9. The learned counsel appearing for the petitioner

relied upon the judgement reported in (2014) 9 SCC 653 in the case of Yogendra Yadav and others Vs. State of Jharkhand and another, which reads as follows:-

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab[1]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In Gian Singh this Court has observed that where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. Needless to say that the above observations are applicable to this Court also.

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant-Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. Learned counsel for the parties have confirmed that the disputes between the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings."

In which, the Hon'ble Supreme Court of India held that the High Court can exercise its power depend on facts of each cases. The offences which involve moral turpitude, grave offence like rape, murder cannot be effaced by quashing the proceedings because they have harmful effect on society. Such offence cannot be said to be restricted to two individuals or two groups. Further, when the High Court convinced that the offences are entirely personal in nature, did not affect public peace or tranquility and whether it feels that quashing of the said proceedings on account of compromise would bring about the peace and would secure ends of justice, it should not hesitate to quash the same.

10. He also relied upon the judgment reported in (2018) 10 SCC 443 in the case of Social Action Forum for Manav Adhikar and another Vs. Union of India and others, which reads as follows :-

"34. In Rajesh Sharma (supra), there is introduction of a third agency which has nothing to do with the Code and that apart, the Committees have been empowered to suggest a report failing which no arrest can be made. The directions to settle a case after it is registered is not a correct expression of law. A criminal proceeding which is not compundable can be quashed by the High Court under Section 482 CrPC. When settlement takes place, then both the parties can file a petition under Section 482 CrPC and the High Court, considering the bonafide of the petition, may quash the same. The power rests with the High Court. In this regard, we may reproduce a passage from a three-Judge Bench in Gian Singh (supra). In the said case, it has been held that:-

"61. ... 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 predominatingly 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."

11. He also relied upon another judgment reported in (2018) 10 SCC 472 in the case of Rajesh Sharma and others Vs. State of Uttar Pradesh and another :-

"16. Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable.¹⁰ Just and fair procedure being part of fundamental right to life,¹¹ interpretation is required to be placed on a penal provision so that its

working is not unjust, unfair or unreasonable. The court has incidental power to quash even a 10 Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India (2012) 10 SCC 603- para 52, SCBA v. Union of India (1998) 4 SCC 409- para 47, Union of India vs. Raghubir Singh (d) by Lrs. (1989) 2 SCC 754- para 7, Dayaram vs. Sudhir Batham (2012) 1 SCC 333 11 State of Punjab vs. Dalbir Singh (2012) 3 SCC 346- para 46, 52 & 85, (2014) 4 SCC 453- para-21 non-compoundable case of private nature, if continuing the proceedings is found to be oppressive. 12 While stifling a legitimate prosecution is against public policy, if the proceedings in an offence of private nature are found to be oppressive, power of quashing is exercised.

17. We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on Petitions (September, 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.

18. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned 12 Gian Singh vs. State of Punjab (2012) 10 SCC 303- para-61, (2014) 5 SCC 364- para -14 trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose."

The Hon'ble Supreme Court of India in full bench headed by the

present Chief Justice of India held that criminal case having overwhelmingly and predominatingly civil flavour stand on a different footing for the purpose of quashing, particularly the offence arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry or the family disputes, where the wrong is basically private or personal in nature and the parties have resolved their entire dispute.

12. The learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court of India in CrI.A.No.336 of 2019 in the case of "The State of Madhya Pradesh Vs. Dhruv Gurjar and another" which reads as follows :-

"16.4. In the case of Parbatbhai Aahir (supra), again this Court has 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 Cr.P.C. Considering a catena of decisions of this Court on the point, this 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 noncompoundable. (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 formulate.(6)In the exercise of the power under Section 482and 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 bequashed 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 maybe 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 wellbeing 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.”16.5In the case of Manish (supra), this Court has specifically observed and held that, when it comes to the question of compounding an offence under Sections 307, 294 and 34 IPC(as in the appeal @ SLP(Crl.) No. 9859/2013) along with Sections 25 and 27 of the Arms Act (as in the appeal @ SLP(Crl.) No.9860/2013), by no stretch of imagination, can it be held to be an offence as between the private parties simpliciter. It is observed that such offences will have a serious impact on the society at large. It is further observed that where the accused are facing trial under Sections 307, 294 read with Section 34 IPC as well as Sections 25 and 27 of the Arms Act, as the offences are definitely against the society, accused will have to necessarily face trial and come out unscathed by demonstrating their innocence.16.6In the case of Deepak (supra), this Court has specifically observed that as offence under Section 307 IPC is noncompoundable and as the offence under Section 307 is not a private dispute between the parties inter se, but is a crime against the society, quashing of the proceedings on the basis of a compromise is not permissible. Similar is the view taken by this Court in a recent decision of this Court in the case of Kalyan Singh (supra). 17.Now so far as the decisions of this Court upon which the learned counsel appearing on behalf of the accused has placed reliance, referred to herein above, are concerned, none of the decisions shall be of any assistance to the accused in the present case. In all the aforesaid cases, the dispute was a matrimonial dispute, and/or the dispute predominantly of a civil dispute, and/or of the dispute where the wrong is basically private or personal.18.Now so far as the reliance placed upon the decision of this Court in the case of Shiji (supra), while quashing the respective FIRs by observing that as

the complainant has compromised with the accused, there is no possibility of recording a conviction, and/or the further trial would be an exercise in futility is concerned, we are of the opinion that the High Court has clearly erred in quashing the FIRs on the afore said ground. It appears that the High Court has misread or misapplied the said decision to the facts of the cases on hand. The High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction. Such observations are presumptive and many a time too early to opine. In a given case, it may happen that the prosecution still can prove the guilt by leading cogent evidence and examining the other witnesses and the relevant evidence/material, more particularly when the dispute is not a commercial transaction and/or of a civil nature and/or is not a private wrong. In the case of Shiji (supra), this Court found that the case had its origin in the civil dispute between the parties, which dispute was resolved by them and therefore this Court observed that, 'that being so, continuance of the prosecution where the complainant is not ready to support the allegations...will be a futile exercise that will serve no purpose'. In the aforesaid case, it was also further observed 'that even the alleged two eyewitnesses, however, closely related to the complainant, were not supporting the prosecution version', and to that this Court observed and held 'that the continuance of the proceedings is nothing but an empty formality and Section 482Cr.P.C. can, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below. Even in the said decision, in paragraph 18, it is observed as under:"18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to

exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."

18.1. Therefore, the said decision may be applicable in a case which has its origin in the civil dispute between the parties; the parties have resolved the dispute; that the offence is not against the society at large and/or the same may not have social impact; the dispute is a family/matrimonial dispute etc. The aforesaid decision may not be applicable in a case where the offences alleged are very serious and grave offences, having a social impact like offences under Section 307 IPC and 25/27 of the Arms Act etc. Therefore, without proper application of mind to the relevant facts and circumstances, in our view, the High Court has materially erred in mechanically quashing the respective FIRs, by observing that in view of the compromise, there are no chances of recording conviction and/or the further trial would be an exercise in futility. The High Court has mechanically considered the aforesaid decision of this Court in the

case of Shiji (supra), without considering the relevant facts and circumstances of the case. 18.2 Even otherwise, in the facts and circumstances of the case of the appeal arising from SLP(Crl.) No. 9860/2013, the High Court has erred in quashing the FIR. It is required to be noted that the FIR was lodged on 21.12.2012 for the offence alleged to happen on 21.12.2012. All the accused were absconding. After a period of approximately three months, they approached the High Court by way of filing a petition under Section 482 of the Cr.P.C., i.e., on 12.03.2013. The learned Chief Judicial Magistrate issued a proclamation under Section 82 of the Cr.P.C. against the accused persons on 14.03.2013. In the meantime, the accused managed to get the affidavits of the complainant and the two witnesses dated 09.02.2013, and the High Court quashed the FIR on 15.03.2013, i.e., within a period of three days from the date of filing the petition. The High Court has also not considered the antecedents of the accused. It has come on record that the accused persons were facing number of trials for the serious offences. The aforesaid would be relevant factors, while exercising the inherent powers under Section 482 Cr.P.C and while considering the application for quashing the FIR/complaint/criminal proceedings. In fact, in such a situation, the High Court ought to have been more vigilant and ought to have considered relevant facts and circumstances under which the accused got the settlement entered into. The High Court has not at all considered the aforesaid relevant circumstances, while exercising the power under Section 482 Cr.P.C."

He pointed out that though the parties entered into compromise, the offence punishable under Section 307 of IPC cannot be quashed, since the offence under Section 307 of IPC is not a private dispute between the parties, but it is a crime against the society. Therefore, quashing the entire proceedings based on the compromise is not permissible.

13. Whereas in the same judgment, the Hon'ble Supreme Court of India relied upon the judgment reported in (2014) 6 SCC 466 in the case of Narinder Singh Vs. State of Punjab, which reads as

follows :-

"16.3.....

29.....

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/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 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.

It is seen from the above the Hon'ble Supreme Court held that it is open to the High Court to examine as to whether incorporation

of Section 307 of 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 of IPC.

14. When this matter is pending for pronouncing orders, the Hon'ble Supreme Court of India held in Crl.Apl.No.349 of 2019 dated 05.03.2019 in the case of the State of Madhya Pradesh Vs. Laxmi Narayan and others, with regard to quashing the proceedings for the offence punishable under Section 307 of IPC on compromise, after discussing the judgments reported in

(i) (2012) 10 SCC 303 - Gian Singh Vs. State of Punjab

(ii) (2011) 10 SCC 705 - Shiji @ Pappu & others Vs. Radhika and another

(iii) (2014) 15 SCC 29 - State of Maharashtra Vs. Vikram Anantrai Doshi

(iv) (2014) 6 SCC 466 - Narinder Singh Vs. State of Punjab
as follows :-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to herein above, 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 herein above;

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."

15. The Hon'ble Supreme Court of India reiterated and clarified in the Narinder Singh case that 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 herein above; 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.

16. In the case on hand, the investigation completed and charge sheet filed for the offences under Sections 120 (B), 147, 148, 447, r/w 109, 352, 352 r/w 109, 506(ii) r/w 109, 386, 386 r/w 109, 307, 307 r/w 109 IPC and Section 3(i) of TNPPDL Act, 1994 and had taken cognizance in S.C.No.465 of 2018. Further, even according to the case of the prosecution, there is no injury to the second respondent/defacto complainant and only on the basis of threatening with dire consequences by showing wooden log, the offence has been registered as against the petitioners. Except mere threatening, there is absolutely no evidence or material to prove the charge for the offence under Section 307 of IPC. On the basis of this prima facie analysis the chances of conviction are remote and bleak. The compromise between the petitioners and the second respondent is going to result in harmony between them which may improve their future relationship. The first accused was held a position as a Agricultural Minister in Government of Tamil Nadu and after the filing of charge sheet he died. Further no materials produced

as against the petitioners to show that they involved in other cases and as such it shows that the petitioners have no bad antecedents.

17. That apart the entire allegations are that the petitioners threatened the defacto complainant to sell a peace of land which was purchased by him. Now the second respondent/defacto complainant is in possession and enjoyment of his property without any hindrance or threat by the petitioners or by their agents. As such the continuation of the criminal case would put the petitioners to great oppression and prejudice and extreme injustice would be caused to them by not quashing this criminal case despite full and complete settlement and compromise with the second respondent/ complainant. Therefore this Court has no hesitation to exercise its power under Section 482 of Cr.P.C. to secure the ends of justice and to prevent the abuse of process of Court.

18. In view of the above, both the Criminal Original Petitions are allowed and as a sequel, the proceedings in S.C.No.465 of 2018 on the file of the learned Special Court for Politicians Cases (MP & MLA) at Chennai is quashed and the terms of Joint Memo of Compromise shall form part and parcel of this Order. The petitioners shall pay a sum of Rs.25,000/-, jointly as costs, to Manasu (Mana Nala Sugalayam), No.695/2, Vaithiar Street, Thirusulam, Chennai-43, within a period of two weeks from the date of receipt of a copy of this order and file a photocopy of the receipt along with a memo reporting compliance in the Registry, filing which the order passed by this Court shall stand automatically cancelled. Consequently connected miscellaneous petitions are closed.

Xerox Copy of the Joint Compromise memo attached.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Special Court for
Politicians Cases (MP & MLA),
Chennai.
2. The Inspector of Police,
Salem Central Crime Branch,
Salem.

WEB COPY

3. The Public Prosecutor,
High Court of Madras,
Chennai.

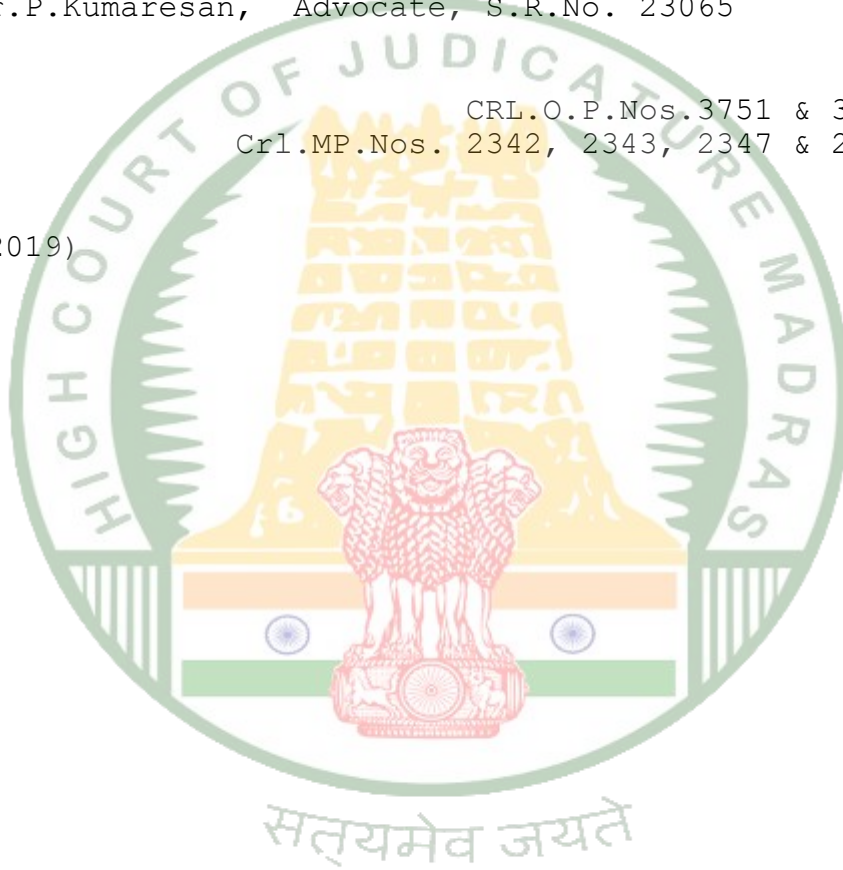
4. Manasu (Mana Nala Sugalayam),
No.695/2, Vaithiar Street,
Thirusulam, Chennai-43,

5. The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.P.Kumaresan, Advocate, S.R.No. 23065

CRL.O.P.Nos.3751 & 3756 of 2019
Crl.MP.Nos. 2342, 2343, 2347 & 2348 of 2019

SKV(CO)
GN(27/03/2019)



WEB COPY