IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Cril.Petn.No.17 of 2019

Irom Randhir Singh @ Naoba aged about 34 years s/o Irom Manglem Singh, resident of Kongpal Khongkham Leikai P.O. & P.S. Porompat in Imphal East District, Manipur.

... Petitioner

- Versus -

1. The State of Manipur represented by the Commissioner/Secretary (Home) to the Govt. of Manipur at the Secretariat Complex, Babupara, Imphal West, Manipur-795001.

2. The Officer-in-charge, Porompat Police Station at Porompat, Imphal East District, Manipur-795001.

... Principal Respondents

3. Shri Pebam Robindro Singh, aged about 66 years S/o (L) P. Mural Singh, Nahrup Mayai Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur- 795005.

4. Smt. Pebam Ongbi Takhellei Devi, aged about 59 years W/o P. Robindro Singh of Naharup Mayai Leikai, P.O. P.S. Porompat, Imphal East District, Manipur-795005.

...Proforma Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioner :: Mr. N. Umakanta, Advocate

For the respondents :: Mr. Ch. Dhananjoy, Sr. Advocate,
Mr. H. Samarjit, PP.

Date of Hearing &
Judgment and Order :: 29.01.2020.

JUDGMENT AND ORDER
(ORAL)

Brief case of the Petitioner:

On 19.09.2018 the Petitioner father-in-law namely Pebam Robindro Singh of Naharup Mayai Leikai lodged a Report to the OC, Porompart Police Station alleging that while he and his wife, namely Pebam Ongbi Takhellei Devi were staying at their residential courtyard, the Petitioner approached them and thereafter shot his wife with a double barrel gun, as a result of which his wife received serious injuries on her chest, right hand and person. Accordingly, he requested for taking up necessary legal action and for which the above referred FIR was registered against the Petitioner.

2. The petitioner had a love marriage with his wife namely Pebam Sonia @ Surbala Devi on December, 2008. However, the role to his marriage with his aforenamed wife was not smooth and nearly caused him his life. Prior to his marriage, while the petitioner was courting his wife, during the holy festival

occurring in the month of March 2008, some local miscreants from his wife's locality had caught hold of when the Petitioner was visiting his wife locality for "Thabal Chongba" and had thrashed him so badly that he lost all consciousness and was fighting for his life. The local miscreants claimed themselves to be members and also having nexus with an underground outfit and by alleging that the Petitioner, being a Policeman, was identifying them had kidnapped and thrashed him. The Petitioner had to be rescued by the Police but since it had occurred in his to be wife locality, the Petitioner did not pursue the matter further. Accordingly, the Petitioner could not have a free, frank and healthy relationship with his wife's family and locality.

3. The Petitioner having been married for the last almost 9 half years with his wife, blessed with a son and a daughter However, as in all marital relationship, the Petitioner and his wife also have their share of arguments and differences. Recently, the Petitioner's wife after some argument with the Petitioner abruptly left for her parental house without informing the Petitioner or any family members leaving their 2 children in the custody of the Petitioner. Thereafter, the Petitioner's parents, who are very much old, weak and sick went to the house of his wife to bring back the Petitioner's wife. However, the petitioner's parents were not only insulted by his wife's parents particularly

his mother-in-law but she even barred the Petitioner's wife from going back to the petitioner's house even though, the Petitioner's wife was ready and in-fact came out to accompany the Petitioner's parents for going back to the matrimonial house. Then the Petitioner and his wife had settled their differences and were in touch with one another over the phone but out of fear and respect for her parents, the Petitioner's wife was waiting for the Petitioner or his parents to call her back.

4. After the Petitioner's wife mother insulted his parents and barred his wife from going back, the Petitioner having no other option went to his wife's house so as to bring her back after making amends with his wife's parents. However, the Petitioner having a deep rooted fear psychosis of his wife's locality, carried his licence double barrel gun for his own safety. Unfortunately, on reaching his wife's house, the Petitioner was not only rebuked and threatened by his wife's parents but he was even pushed around by his wife's mother and during which the Petitioner fall down on the ground and accidentally a shot was fired wounding the Petitioner's wife's mother on some part of her body. The shot was neither intentional nor fatal and the Petitioner's wife's mother is now fit and fine. After the altercation, the Petitioner having realized that an un-wanted misshape had occurred and also to prevent further misgiving immediately called

up his superior officers so as to surrender himself and to be taken into custody. Accordingly, the Petitioner had in-fact surrendered himself to his superior officer on 19.09.2018 itself but was only formally arrested on the next day by the personnel's of the Porompat Police Station.

5. The Petitioner is innocent of the charges levelled against him. He had no intention to cause any harm to anybody particularly his mother-in-law. It was only because of his apprehension for his own safety that the petitioner had taken up protective measures for self defence in the event of any untoward incident. The Petitioner has not committed any crime within the meaning of S.307 and 326, IPC nor S.25(1-C) of the Arms Act. He has no mensrea or intention for causing death or injury to any person least of all his mother-in-law. The Police have wrongly invoked the above charges and sections against him.

6. The Petitioner is having 2 children from his marriage with his above named wife. The first son is about 8 years old and presently studying in Class II at Heritage Convent while the second daughter is only 3 years old not having started her schooling. Since the Petitioner’s wife is yet to return and on the other hand, as the Petitioner is still lodged in Jail, the minor children have now become destitute in the absence of the

parents. The aged parents of the petitioner are in no condition to look after the minor children. Consequent to the registering of the FIR, the Petitioner, who in-fact had surrendered to show his good intention, was purportedly show as arrested and remanded to police and judicial custody until he was released on bail after about 85 days. In the meantime, the Petitioner had not only reconciled and living with his wife but his in-laws having realized their mistakes in registering the FIR, as the whole incident was an accident, have requested the OC Porompat Police Station to close the FIR. Likewise the Petitioner's mother-in-law, who is supposedly the victim, has expressed that she has no grievances against the Petitioner. Thus, the FIR Case has become a futility. However, on the other hand the existence of the FIR has made the Petitioner and his family suffered immensely.

7. Hence this Petition is filed for quashing the FIR by the petitioners.

8. The Petitioner does not make out any ground for quashing the FIR No.256(9)2018 PRT PS u/S 307/326 IPC & S.26(1-C) Arms Act. It is submitted that as per the statement recorded under section 161 Cr.P.C in connection with the FIR case, the wife of the petitioner, namely, Surbala Devi, stated that the petitioner frequently beat and tortured her brutally. She further stated that in the month of June, 2018, the petitioner

again beat her for unnecessary reason and she ran back along with her daughter and stayed at her parental Home. In that occasions occurred frequently. One day, the petitioner came to her paternal house and without informing to anyone; he picked up their daughter and went back.

9. It is submitted that the witnesses including the wife of the petitioner in connection with the FIR case, stated that on 19th December, 2018, the petitioner (who is main accused person in the FIR case), came into the courtyard of the complainant of the FIR case, namely Pebam Robindro Singh (i.e. the courtyard of paternal residence of petitioner's wife) and he started quarrel with Pebam (O) Takehllei Devi (victim who is mother-in-law of the petitioner) and fired one round from his gun injuring the body parts of the victim and the petitioner (accused) ran away along with his gun leaving the belt fitted with ammunitions. The facts asserted by the petitioner are all false and the same is specifically denied.

10. Moreover after registering FIR for cognizable and non-compoundable offences, there is no scope for withdrawal of the FIR on the mere filing of a withdrawal application by the information of the FIR. Information disclosing cognizable offence is enough for registration of FIR and investigation. The investigating authority has to properly investigate and collect

relevant and sufficient evidences to find out the truth. The investigating agency cannot go by the whims and desires of fluctuating decisions or intentions of the informant of the FIR. A crime committed by a person cannot be waived by mere filing of withdrawal application. Further, the guilt or innocence of the petitioner is to be determined after trial of the FIR case and the same cannot be decided by mere filing of withdrawal applications of few persons. Moreover, the evidences collected so far cannot be erased or superseded by such applications.

11. The petitioner is at liberty to put his allegations by way of defence before the trial court, but the same cannot be the sole deciding factor or criteria for his alleged innocence before beginning the trial of the FIR case.

12. The petitioner does not disclose the chain of events that led for the FIR to arise. It is the petitioner and his family who influenced his wife and her family which led to the filing of the present petition as well as in obtaining affidavits of his wife, mother-in-law and father-in-law and withdrawal applications. The chain of events is due to the acts of influences by the family of the petitioner after registering the FIR. Moreover, a crime or offence that arose from domestic quarrelling should be tried as per law. Such offence or crime cannot be waived by mere claim of domestic misunderstanding or domestic quarrelling. In law, an

offence cannot be excused on the ground of domestic misunderstanding or quarrelling. The report lodged to the police and the investigation so far reveals that the petitioner had clear intention to commit murder. The question of mens rea cannot be decided by mere allegations, filing of applications and affidavits and the same has to be decided with proper evidences as per law at the time of trial of the FIR case. In short, mere allegations or assertions based on inadmissible evidences cannot be a ground for quashing the FIR. Therefore the respondent seek dismissal of the quash petition.

13. The learned counsel for the parties cited the following citations in support of their submissions.

1) 1992 Supp (1) SCC 335

2) AIR 1991 SCC 69

3) AIR 1991 SCC 70

4) (2014) 6 SCC 466

5) (2017) 9 SCC 641

14. I have given my careful consideration to the respective submission made by the learned counsel for both parties and the compromise affidavits and undertaking filed by the parties concerned.

15. The Law Commission of India in its 154th report (1996) recommended inclusion of S. 498A in the Table appended to Section 320(2) so that it can be compounded with the permission of the Court. The related extracts from the Report are as follows:

> "*Of late, various High Courts hove quashed criminal proceedings in respect of non-cognizable offences because of settlement between the parties to achieve harmony and peace in the society. For instance, criminal proceedings in respect of offences under Section 406, IPC, relating to criminal breach of trust of dowry articles or lstridhan and offences under section 498A, IPC relating to cruelty on woman by husband or relatives of husband were quashed in Arun Kumar Vohra v. Ritu Vohra, Nirlap Singh v. State of Punjab."*

16. In continuation of what was said in the 154th Report, it is pointed out that the Hon'ble apex court, in the case of B.S. Joshi vs. state of Haryana, has firmly laid down the proposition that in order to subserve the ends of justice, the inherent power under section 482 CrPC can be exercised by the High court to quash the criminal proceedings at the instance of husband and wife who have amicably settled the matter and are desirous of putting end to the acrimony. The principle laid down in this case was cited with approval in *Nikhil Merchant vs. CBI*. However a coordinate Bench doubted the correctness of these decisions

and referred the matter for consideration by a larger Bench. According to the referring Bench, the court cannot indirectly permit compounding of non-compoundable offences.

17. The recommendation of the Law commission in the 154th Report regarding section 498A was reiterated in the 177th Report (2001). The commission noted that over the last several years and regarding the observations made in *Gian Singh vs. state of Punjab [2010(12) SCALE 461]* representations had been received by the Law commission from individuals and organizations to make the said offence compoundable.

18. Further, Justice Malimath committee's Report on Reforms of criminal Justice system strongly supported the plea to make section 498A a compoundable offence. The Committee observed:

> *"A less tolerant and impulsive woman may lodge on FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn*

over new leaf for loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family...

This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together."

19. The overwhelming views reflected in the responses received by the Law Commission and the inputs the Commission has got in the course of deliberations with the members of District and Subordinate Judiciary, the members of the Bar and the law students is yet another reason persuading us to recommend the amendment of law to make the offence under 498A compoundable with the permission of Court.

20. The Law Commission in its 154th and 177th Reports recommended that these two offences together with several

other offences may be shifted to the Table appended to Section 320(1) so that it can be compounded without the permission of the Court. However, Sec.324 was deleted from the list of compoundable offences by the Code of Criminal Procedure (Amendment) Act of 2005. The Commission has probed into the background in which this offence was deleted. At first blush, it appeared that it was deleted by reason of an inadvertent error. But, it does not appear to be so. In the CrPC (Amendment) Bill of 1994, it was proposed that Section 324 IPC should be omitted from the Table under Sub-Section (2) of Section 320 CrPC. The apparent reason for such proposal was that the provision was likely to be misused by the accused by exerting pressure on the complainant to agree for composition. However, this reasoning is quite fallacious. For most of the compoundable offences, the argument can be advance. The proposal which was initiated by the Home Ministry during 1990s came to fruition in 2005 and by the CrPC(Amendment) Act of 2005, argument can be advanced. The proposal which was initiated by the Home Ministry during 1990s came to fruition in 2005 and by the CrPC (Amendment) Act of 2005, Section 324 was omitted from the list of compoundable offences. What was sought to be done in the year 1994 or before, was thus accomplished in 2005. It is interesting to note that within a year thereafter, in the Code of Criminal Procedure (Amendment) Bill, 2006, Section 324 was sought to

be reinducted into Section 320. It appears that what weighed with the Ministry in proposing the said amendment was the recommendation of the Law Commission to include Section 324 in the Table under Section 320 (1) CrPC by transferring it from the Table under Section 320(2). Accordingly, Clause 30 of the Bill provided for this change. However, the CrPC (Amendment) Act, 2008 (Act No.5 of 2009) shows that the said change was not approved by Parliament, and Section 324 continues to be a non-compoundable offence.

21. On discussions, the Law Commission opined that six offences in IPC may be made compoundable: Section 380 (theft in dwelling house) subject to the proviso that the value of property stolen is not more than Rs.50,000/-; Section 384 (extortion); Section 385 (extortion by putting a person in fear of injury); Section 461 (dishonestly breaking open receptacle containing property); Section 489 (tampering with property mark with intent to cause injury); Section 507 (criminal intimidation by an anonymous communication) subject to the rider that compounding shall be confined to criminal intimidation falling within the first part of Section 506.

22. It will also not be out of place to mention that the Law Commission decided to make the offence cognizable which broke on civil disputes. All the recommendations of the Law

Commission is created only on the observations of the Hon'ble Supreme Court Judgments.

23. Further it is to be mentioned an excerpt of the judgment rendered by the Hon'ble apex court in *Dindigarn Bikshapathi & Another Versus State of A.P. 2008 (1) Crimes (SC) 100*. The Supreme Court held that Section 482Cr.P.C does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code (ii) to prevent abuse of the process of court and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal cases, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in

course of administration of justice on the principle “quando lex aliauid alicui concedit, concedre videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. lnherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. lt is to be exercised ex debitojustitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. lt would be an abuse of process of the court, to allow any action which would result in injustice and prevent promotion of justice. ln exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

24. In *R.P.Kapur v. state of Punjab AIR 1960 SC 866* this court summarized some categories of cases wherein herein power can and should be exercised to quash the proceedings.

i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction

ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirely do not constitute the offence alleged.

iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

25. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under section 482 of the code the High court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge Judicial

process should not be an instrument of oppression, or, needless harassment court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, the section is not an instrument handed over to an accused to short circuit a prosecution and bring about its sudden death. The scope of exercise of power under section 482 of the code and the categories of cases where the High court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this court.

26. The legal position is well settled that if an offence is disclosed' the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed and if, however, the materials do not disclose an offence, no investigation should be permitted.

27. In addition to the above principles and positions settled and laid down by the apex court, it is worth to take into account the directions of the Hon'ble apex court laid down in *Lalita Kumari Vs. Govt. of U.P. & 7 Ors. 2013(14)JT 399*.The same is reproduced as follows :

"In view of the aforesaid discussion we hold Registration of FIR is mandatory under Section 154 of the code, if the information discloses commission of a cognizable offence and no preliminary is permissible in such a situation.

If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not

If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In case where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

The Police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence

The Scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and

circumstances of each case. The category of cases in which preliminary inquiry may be made are as under.

a) *Matrimonial disputes*
b) *Commercial offences*
c) *Medical negligence cases*
d) *Corruption cases*
e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. While ensuring and protecting the rights should be made time bound and in any cause it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

Since the General Diary/Station Diary/Diary Dairy is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Dairy and the decision to conduct a preliminary inquiry must also be reflected as mentioned above.

From the above legal positions and settled principles, it is obvious and clear that the petitioner has made out no ground for quashing

the FIR and the petitioner fails to establish the rarest of the rate cases for quashing the FIR case and the connected investigation."

28. The Hon'ble Supreme Court in its latest decision(Criminal Appeal No.349 of 2019) distinguished the conflict of the two Judge bench of the Hon'ble Supreme Court vide its order dated 08.9.2017, in view of the apparent conflict between the two decisions of Hon'ble Supreme Court in the case of *Narinder Singh Vs. State of Punjab (2014) 6 SCC 466* and *State of Rajasthan Vs. Shambhu Kewat (2014) 4 SCC 149*, has referred the matter to the Bench of three Judges and held as follows:

"*12. Now so far as the conflict between the decisions of this Court in the cases of Narinder Singh (supra) and Shambhu Kewat (supra) is concerned, in the case of Shambhu Kewat (supra), this Court has noted the difference between the power of compounding of offences conferred on a court under Section 320 Cr.P.C. and the powers conferred under Section 482 Cr.P.C. for quashing of criminal proceedings by the High Court. In the said decision, this Court further observed that in compounding of offence, the power of a criminal court is circumscribed by the provisions contained in Section 320 Cr.P.C. and the court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing*

a criminal proceedings or criminal complaint under Section 482 Cr.P.C. is guided by the material on record as to whether ends of justice would justify such exercise of power, although ultimate consequence may be acquittal or dismissal of indictment. However, in the subsequent decision in the case of Narinder Singh (supra), the very Bench ultimately concluded in paragraph 29 as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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 we 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.

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."

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/PC 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."

29. Insofar as the present case is concerned, the criminal proceedings for the main offences under Sections 307 of IPC and Arms Act were mechanically registered and the investigation was under preliminary stage in a case of civil nature. Somehow, the Petitioner/Accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are not serious and civil in nature. Therefore, the gravity of the offence and the conduct of the petitioner/accused considered by this Court on the settled guidelines of the Hon'ble Supreme Court in the above

mentioned case and on the basis of a settlement between the accused and the complainant, quash the FIR, in exercise of power under Section 482 of the Code.

30. When the matter was taken on 27.01.2020, it was represented before this Court that they have agreed to settle the matter between them. Since the petitioner's wife, namely Pebam (N) Irom (o) Sonia @ Surbala and father in-law and the victim (Mother-in-Law of the petitioner) agreed to post the matter today in the chamber. Today, when the matter is taken up the petitioner's wife by namely Pebam (N) Irom (o) Sonia @ Surbala and two children by namely Irom Maxionel and Maxshita are also appeared in the Chamber and the complainant by namely Shri Pebam Robindro Singh (R-3) and the mother-in-law/victim by namely Smt. Pebam Ongbi Takhellei Devi also appeared in the Chamber. On accepting the conditions and negotiations between the parties, the court inclined to allow this Cril.Petn.No.17 of 2019 on the condition that the petitioner who is the accused undertakes to file an affidavit by stating that in future he will not indulge such kind of activities and also not quarrel in any form with the parents in-law by namely the complainant and the victim.

31. Mr. N. Umakanta, learned counsel for the petitioner also undertakes to file affidavit by the petitioners by 30.1.2020.

32. I heard Mr. H. Samarjit, learned PP. Though critically he is opposing for quashing this FIR since the offence registered against this petitioner is serious in nature and in particularly Arms Act, he is strongly opposing for quashing because the officers are serious in nature. But being parties are relatives he represented before this court that he to leave to this court for consideration of this Court.

33. Mr. Dhananjoy, the learned Senior Counsel who represented for the complainant is represented before this Court that though the petitioner/Accused is the son-in-law of the Complainant and the victim, and their daughter who is the petitioner/Accused is living peacefully with the petitioner, agreed for quashing this FIR since they want the peaceful life of their daughter and two children with this petitioner. The Learned Senior Counsel further represented before this Court, that in future this petitioner should not indulge in such act. He represented this Court that the FIR may be quashed and record the undertaking affidavit to be filed on 30.01.2020. Accordingly, the affidavit dated 30.01.2020 is recorded and the same to be the Form Part of this order.

34. Though the offences are very serious in nature but the relationship of the parties namely the petitioner/Accused and the Complainant/victim should not be broken down the peaceful

life of the daughter and children of the Complainant/victim. The Hon'ble Supreme Court and various High Courts passed several orders that the criminal complaints can be quashed for the welfare of the parties.

35. Accordingly, I am inclined to allow the criminal petition and passed the following orders :

a) this Criminal Petition No. 17 of 2019 is allowed.

b) the FIR being No.256(9)2018 Porompat PS U/S 307/326 IPC & 25(1-C) Arms Act registered against the petitioner is quashed.

JUDGE

FR/NFR

Sushil

Yumkham Rother Digitally signed by Yumkham Rother Date: 2020.09.15 11:31:35 +05'30'