

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc Petition No.2586 of 2018

Shrikant Sonkar, S/o Shri K.R. Sonkar, aged about 45 years, R/o Pali and Tahsil, P.S. Pali, Civil and Revenue District Korba (CG)

----- Petitioner

Versus

State of Chhattisgarh Through: The Police Station Pali, Civil and Revenue District Korba (CG)

----- Respondent

Criminal Misc Petition No.675 of 2019

Raju @ Hriday Das Mahant, S/o. Kanwal Das, aged about 28 years, R/o Rangol Saraipali, P.S. Pali, Civil and Revenue District Korba (CG)

----- Petitioner

Versus

State of Chhattisgarh Through: The Police Station Pali, Civil and Revenue District Korba (CG)

----- Respondent

And

Criminal Misc Petition No.848 of 2019

Rajkumar Miri @ Govind, S/o Shiv Prasad Miri, aged about 26 years, R/o Banjrapara, P.S. Araiband, Takhatpur, District Bilaspur

----- Petitioner

Versus

State of Chhattisgarh Through: The Police Station Pali, Civil and Revenue District Korba (CG)

----- Respondent

For Petitioners: Mr.Rahil Arun Kochar, Advocate

For Respondent / State: -

Mr. Ravi Kumar Bhagat, Dy. G.A.

For Complainant-Rameshwar Singh Kunwar: -

Mr.Dev Ashish Biswas, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/06/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Since common question of law and fact are involved in these three petitions, they are heard together and are being disposed of by this common order.
3. By way of these three petitions, the petitioners seek quashment of Criminal Case No.760/2018 pending against them in the Court of the Judicial Magistrate First Class, Pali for offence punishable under Section 186, 332, 353 and 294/34 of the IPC on the basis of complaint made by complainant-Rameshwar Singh Kunwar.
4. Upon issuance of notice, the petitioners and the complainant both have appeared before the Additional Registrar (J.) and made statements before this Court that they have compromised the matter and they wish to maintain good relationship, as such, criminal proceedings initiated against them be quashed.
5. Mr.Ravi Bhagat, learned Deputy Government Advocate for the respondent/State, would submit that since FIR was lodged by public servant, offence under Section 186 of the IPC has been registered and therefore, the offence being non-compoundable, FIR on the basis of compromise should not be quashed.
6. I have heard learned counsel for the parties and

considered their rival submissions made herein-above and went through the record with utmost circumspection.

7. The Punjab and Haryana High Court in the matter of **Vinod @ Boda and others v. State of Haryana and another** (CRM M-31765 of 2012), decided on 1.5.2013 held as under:-

"10. So, as per the allegations in the FIR, the accused/petitioners have put hurdles in the official work of complainant Satbir Singh. So, it is an offence against State and cannot be allowed to be compounded in view of authority **Gian Singh's case (supra)**, referred to above. This Court however, in **Criminal Misc. No.M-31858 of 2012 titled as Ranjit Singh and Anr. v. State of Punjab and Anr.'s case (supra)** allowed the compounding of offence in FIR under Sections 353, 186, 341, 332, 427 and 34 of the IPC. However, while sitting singly, I should accept the earlier verdict of this court or the matter may be referred to the larger Bench for decision whether the offences under Sections 353, 186, 341, 332, 427 and 34 of the IPC could be allowed to be compounded being offence against State.

11. So, the case be put up before Hon'ble the Chief Justice of this Court for deciding the following point:-

1. Whether the offences under Sections 353, 186 and 332 of the IPC against the public servant can be allowed to be compounded on the basis of compromise with the public servant?"

We have perused the reference made by the learned Single Judge and are of the view that there is an inadvertent mistake in formulating the reference, so we reframe the question to be answered by us which reads as under:-

"Whether the offences under Sections 353, 186 and 332 of the Indian Penal Code against the accused-petitioners can be quashed on the basis of compromise with the complainant- public servant?

The extent and sweep of inherent power exercisable by the High Court under Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings on the basis of compromise between the accused and the victim of crime in cases which are not compoundable under Section 320 or 321 of the Code, has been considered in extenso and answered by the Hon'ble Supreme Court in Gian Singh's case (supra), laying down that the compounding of offence and quashing of criminal proceedings are two separate things and not interchangeable and that the two powers are distinct and different although ultimate consequence may be the same. It has been authoritatively ruled that where the offender and victim have settled their dispute, the High Court in exercise of its inherent power under Section 482 Cr.P.C., is competent to quash criminal proceedings even relating to the non-compoundable offences though such a power needs to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc. The pronouncement thus says:-

"52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In

compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 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 offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and

victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

The decision in Gian Singh's case (supra) also approves the view taken by a Five-Judges Bench of this Court in Kulwinder Singh & Ors. vs. State of Punjab & Anr., 2007(3) RCR (Crl.) 1052.

It is indeed now unarguable to say that the power exercisable by the High Court under Section 482 CrPC for the quashing of criminal prosecution is limited or affected by the provisions of Section 320 Cr.PC.

We may, however, hasten to add that power of the Court under Section 320 CrPC to 'compound' an offence on the basis of compromise between the accused and the victim can be invoked only if the subject offence is compoundable. In other words, power under Section 320 CrPC is not exercisable in relation to a case of non-compoundable offence as ruled by the Hon'ble Supreme Court in a string of decisions including (i) Surendra Nath Mohanty vs. State of Orissa, (1995) 5 SCC 238; (ii) Bankat Vs. State of Maharashtra, (2005) 1 SCC 343; (iii) Gulab Das & Ors. vs. State of MP, (2011) 10 SCC 765 and B.S. Joshi and others vs. State of Haryana and another, (2003) 4 SCC 675.

The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Cr.P.C and pass an appropriate order so as to secure the ends of justice.

The doubt has been expressed by the learned Single Judge whether in exercise of inherent power under Section 482 CrPC criminal proceedings on the basis of compromise entered between the parties where the offence is against the public servant can be quashed or not by the High Court is the issue before us.

The magnitude of inherent jurisdiction exercisable by the High Court with a view to prevent the abuse of law or to secure the ends of justice, is wide enough to include its power to quash the proceedings in relation to the non-compoundable offences including the ones involved in the present case notwithstanding the bar under Section 320 CrPC. Such a power, in our considered view, is exercisable by the High Court in all those circumstances where the conclusion of trial would ultimately result into futility...."

8. Reverting to the facts of the present case in the light of decision of the Punjab and Haryana High Court in Vinod @ Boda (supra), it is quite vivid that the petitioners and complainant-Rameshwar Singh Kunwar both have made statements on oath before this Court (before Additional Registrar, J.) that they have settled their dispute amicably as the dispute appears to be of civil in nature and they wish to maintain good relationship and there is hardly any likelihood of offender being convicted, in the considered opinion of this Court, quashing the criminal proceedings for offence under Sections 186, 332, 353 and 294/34 of the IPC would be in the ends of justice.

9. Accordingly, the petitions are allowed and criminal

proceedings in Criminal Case No.760/2018 pending against the petitioners in the Court of the Judicial Magistrate First Class, Pali for offence punishable under Sections 186, 332, 353 and 294/34 of the IPC are hereby quashed and the petitioners are acquitted of the said charges.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-