

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 476/2015

Rajeshwar S/o Mahadeorao Niwal and others
Vs.

State of Maharashtra, through P.S.O. Yavatmal (City), P.S. Yavatmal (City), Tq. And Dist.
Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. R. Joharapurkar, Advocate for applicants
Miss T.H. Udeshi, APP for non-applicant no.1/State
Shri T.S. Deshpande, Advocate for non-applicant no.2.

CORAM : N.W. SAMBRE AND
N.B. SURYAWANSHI, JJ.

DATED : 26.02.2020

This application is by accused persons in Crime No.882/2013 registered with non-applicant no.1 Police Station, consequent to the complaint lodged by non-applicant no.2 for an offence punishable under Sections 420, 467, 468, 471 read with Section 34 of Indian Penal Code.

The accused persons i.e. applicant nos.1 and 2 are husband and wife whereas the applicant no.3 is their employee. The non-applicant no.2-complainant is sister of applicant no.1. It is the case of prosecution that pursuant to the complaint lodged by non-applicant no.2, the aforesaid offence came to be registered as the applicants herein in connivance with each other fraudulently got executed transfer deed in relation to immovable property in which the non-applicant no.2 was holding certain interest.

After the application was admitted, the applicants and non-applicant no.2 have jointly come out with an application for quashing of the proceedings by consent. The application is sworn by the applicant no.1 and the complainant. It is stated in the application that a memorandum of understanding/settlement has been drawn based on the censuses. It is also claimed that parties have resolved the dispute in relation to the subject matter of the present application so also the other issues inter se between the parties i.e. applicant and non-applicant no.2.

Both the learned counsel appearing for applicant nos. 1 to 3 and non-applicant no.2 have drawn support from the judgment of the Apex Court in the matter of **Gian Singh Vs. State of Punjab and another** reported in **(2012) 10 Supreme Court Cases 303**, particularly para 61 which reads thus:

“61. *The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape,*

dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

Our attention is also invited to the judgment given in the matter of *Narinder Singh and others Vs. State of Punjab and another* reported in *(2014) 6 Supreme Court Cases 466*, particularly para 29.1 to 29.7.

“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.

29.3 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 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 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, those criminal cases having overwhelmingly and pre-dominantly 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 is 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 later 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 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.”

As such, the joint submissions are, even if, the offence is not compoundable, however, in the interest of justice and considering the relationship between the parties, the application needs to be allowed.

This Court during the course of hearing of the application has recorded identity of the respective parties who were present in the Court through their counsel. The non-applicant no.2/original complainant has volunteered in

open court that she has extended her consent for quashing of the proceedings in view of the terms mentioned in the application.

As such this Court is satisfied that the gravity of the crime is not heinous or serious one. The nature of allegation in the complaint moved by the non-applicant no.2 against the applicants, prima facie, appears to be a commercial/property dispute which is basically a private or personal in nature. The parties having regard to their blood relation have resolved their dispute and as such the possibility of conviction is remote and bleak.

In view of above continuation of criminal case will put the applicants to a great prejudice and hardship.

In the aforesaid background and the position of law as has emerged from the judgment cited *supra* in the matter of *Gian Singh Vs. State of Punjab and another* and *Narinder Singh and others Vs. State of Punjab and another*, in our opinion, the application needs to be allowed in terms of prayer Clause (1) and (2). As such, main application itself stands disposed of in the above terms.

JUDGE

JUDGE