

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 674/2021**

Date of decision: 12th March, 2021

IN THE MATTER OF:

MOHD UMAIR @ UMER

..... Petitioner

Through Mr. Jaspal Singh, Advocate

versus

STATE (GOVT NCT OF DELHI) AND ORS & ANR

.....Respondents

Through Ms. Kusum Dhalla, APP for the State
along with SI Ram Niwas, P.S.
Chandni Mahal.
Mr. Amit Yadav, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) has been filed for quashing FIR No.50/2020 dated 26.03.2020, registered in Police Station Chandni Mahal, Delhi, for offence under Section 307 IPC.

2. On a complaint of respondent No.2, FIR No.50/2020 has been registered. In the complaint it is stated that the complainant resides at H.No.536, Gali Hakim Ji, Choori Walan, Jama Masjid, Delhi. It is stated that on 26.03.2020 at about 11:00 AM his neighbour Furkan called him and asked him to deliver some items to his house. It is stated that on the way to the house of Furkan the complainant/respondent No.2 met the accused who was arguing with his mother. It is stated that when the petitioner asked the

accused not to argue with his mother, the accused started abusing the complainant and started fighting with him. It is stated that the accused slapped the complainant and when people gathered there the accused threatened the complainant and went towards his house. It is alleged that about 11.30/12.30 the accused stabbed the complainant on the stomach. The records indicate that the complainant was taken to L.N Hospital. In the MLC the doctor has recorded the present case to be one of physical assault near home address at around 12.00 PM on 26.03.2020, stab injury in the abdomen. Charge-sheet has been filed against the complainant. The charge-sheet states that the complainant has suffered grievous injuries. The accused/petitioner has been released on bail on 27.04.2020.

3. This petition has been filed on the ground that after the intervention of the parents and the well-wishers the parties have stated to settle their disputes. A settlement deed dated 26.10.2020 (Annexure P-2) has been filed.

4. It is well settled that the High Court has the power to quash FIR/complaint on the basis of a compromise arrived at between the parties while exercising its jurisdiction under Section 482 Cr.P.C. The Supreme Court in Gian Singh v. State of Punjab reported as **(2012) 10 SCC 303** observed as under:

“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 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. 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.”

5. The present case is for quashing the criminal proceedings for offences under Section 307 IPC. There was a conflict in various proceedings by the Supreme Court as to whether an offence under Section 307 IPC could be quashed by the High Court while exercising its power under Section 482 Cr.P.C. It has been held that an offence under Section 307 IPC cannot be quashed by the High Court while exercising its powers under Section 482 Cr.P.C on the ground that the parties have settled their disputes. The Supreme Court in State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149, observed as under:

“15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, is because the Code has identified which conduct should be brought

within the ambit of non-compoundable offences. Such provisions are not meant just to protect the individual but the society as a whole. The High Court was not right in thinking that it was only an injury to the person and since the accused persons (sic victims) had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is, safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.”
(emphasis supplied)

On the other hand the Supreme Court in Narinder Singh v. State of Punjab, (2014) 6 SCC 466, after noticing the judgment in State of Rajasthan v. Shambhu Kewat (supra) quashed the proceedings under Section 307 IPC and observed as under:

“22. Thus, we find that in certain circumstances, this Court has approved the quashing of proceedings under Section 307 IPC whereas in some other cases, it is held that as the offence is of serious nature such proceedings cannot be quashed. Though in each of the aforesaid cases the view taken by this Court may be justified on its own facts, at the same time this Court owes an explanation as to why two different approaches are adopted in various cases. The law declared by this Court in the form of judgments becomes binding precedent for the High Courts and the subordinate courts, to follow under Article 141 of

the Constitution of India. Stare decisis is the fundamental principle of judicial decision-making which requires “certainty” too in law so that in a given set of facts the course of action which law shall take is discernible and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance. The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. It has, therefore, support from the human sense of justice as well. The force of precedent in the law is heightened, in the words of Karl Llewellyn, by “that curious, almost universal sense of justice which urges that all men are to be treated alike in like circumstances”.

23. As there is a close relation between equality and justice, it should be clearly discernible as to how the two prosecutions under Section 307 IPC are different in nature and therefore are given different treatment. With this ideal objective in mind, we are proceeding to discuss the subject at length. It is for this reason we deem it appropriate to lay down some distinct, definite and clear guidelines which can be kept in mind by the High Courts to take a view as to under what circumstances it should accept the settlement between the parties and quash the proceedings and under what circumstances it should refrain from doing so. We make it clear that though there would be a general discussion in this behalf as well, the matter is examined in the context of the offences under Section 307 IPC.

24. The two rival parties have amicably settled the disputes between themselves and buried the hatchet.

Not only this, they say that since they are neighbours, they want to live like good neighbours and that was the reason for restoring friendly ties. In such a scenario, should the court give its imprimatur to such a settlement? The answer depends on various incidental aspects which need serious discourse. The legislators have categorically recognised that those offences which are covered by the provisions of Section 320 of the Code are concededly those which not only do not fall within the category of heinous crimes but also which are personal between the parties. Therefore, this provision recognises where there is a compromise between the parties, the court is to act at the said compromise and quash the proceedings. However, even in respect of such offences not covered within the four corners of Section 320 of the Code, the High Court is given power under Section 482 of the Code to accept the compromise between the parties and quash the proceedings. The guiding factor is as to whether the ends of justice would justify such exercise of power, both the ultimate consequences may be acquittal or dismissal of indictment. This is so recognised in various judgments taken note of above.”
(emphasis supplied)

A larger Bench of Supreme Court in State of M.P. v. Laxmi Narayan, (2019) 5 SCC 688, resolved the conflict by observing as under:

“14. Now so far as the conflict between the decisions of this Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] and Shambhu Kewat [State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149 : (2014) 4 SCC (Cri) 781] is concerned, in Shambhu Kewat [State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149 : (2014) 4 SCC (Cri) 781], this Court has noted the difference between the power of

compounding of offences conferred on a court under Section 320 CrPC and the powers conferred under Section 482 CrPC for quashing of criminal proceedings by the High Court. In the said decision, this Court further observed that in compounding the offences, the power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC and the court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing criminal proceedings or criminal complaint under Section 482 CrPC 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 Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] , the very Bench ultimately concluded in para 29 as under: (SCC pp. 482-84)

“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 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/delicate 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.”

15. 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:

15.1. 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;

15.2. 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;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;

15.4. 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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5 [Ed.: Para 15.5 corrected vide Official Corrigendum No. F.3/Ed.B.J./22/2019 dated 3-4-2019.] . 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.”
(emphasis supplied)

6. The petitioner is a youngster of 21 years having entire life ahead of him. The parties are living in the same area. There are no criminal antecedents against the petitioner. He has not absconded. The charge-sheet has been filed. A perusal of the charge-sheet would show that during interrogation the accused has stated that when he was arguing with his mother, the complainant slapped him, he felt insulted and therefore in anger he took a knife from a vegetable vendor and stabbed the complainant. The accused has already spent about a month in custody. The accused has expressed regret in the Court. The complainant who is present in the court also states that the life of the youngster would get spoiled if proceedings continue.

7. Keeping in mind the fact that the accused is a 21 year old youngster having entire life ahead of him and the fact that the parties have entered into a settlement, this Court is inclined to exercise its jurisdiction under Section 482 Cr.P.C to quash the FIR on the ground that the parties have entered into a compromise. The petitioner, who is appearing in person along with his counsel, is warned not to indulge in such activities and repeat the offence in future.

8. The youngster must learn to control his anger and keep in mind that he cannot take law in his hands.

9. The petitioner is directed to do one month community service at Gurdwara Bangla Sahib from 16.03.2021 to 16.04.2021.

10. This Court is also inclined to impose cost of Rs.1,00,000/-(Rupees

One Lakh Only) on the petitioner. The amount shall be paid to the following institutions:

- a) Sum of Rs.25,000/-(Rupees Twenty Five Thousand Only) in the 'DHCBA Lawyers Social Security and Welfare Fund'.
- b) Sum of Rs.25,000/-(Rupees Twenty Five Thousand Only) in the 'Nirmal Chhaya Foundation'.
- c) Sum of Rs.25,000/-(Rupees Twenty Five Thousand Only) in the 'Delhi Police Welfare Fund'.
- d) Sum of Rs.25,000/-(Rupees Twenty Five Thousand Only) in the 'Army Welfare Fund Battle Casualties'.

Copy of the receipts be filed with the Registry within three weeks from today to show compliance of the order. After completion of one month, a certificate from Gurdwara Bangla Sahib be also filed to show compliance of the order. In case of any absenteeism/default on the part of the petitioner, the same shall be conveyed immediately by Gurdwara Bangla Sahib to the concerned SHO, who shall in turn inform the learned APP for the State, for bringing the same to the notice of the Court and for seeking recall of the orders passed today.

11. With the above directions the petition is disposed of along with the pending applications, if any.

12. A copy of this order be transmitted to Gurudwara Bangla Sahib.

SUBRAMONIUM PRASAD, J.

MARCH 12, 2021

Rahul