

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.4 OF 2020

Suparna Mandal & others

Petitioners

Mr.J.K.Panda Advocate

-versus-

State of Odisha

....***Opposite Party***

Mr..M.K.Mohanty, ASC

Mr. S.K.Dash, Advocate

CORAM:

JUSTICE S.K. PANIGRAHI

Order
No.

ORDER

07.1.2022

04.

1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioners, State/opposite party No.1, and informant/opposite party No.2 who are present in Court today through physical mode.
3. In this application under Section 482 of the CrPC, the Petitioners have prayed for quashing the order of cognizance dated 04.12.2012 at Annexure-1 series passed by the learned J.M.F.C., Motu in GR Case No. 93 of 2012 arising out of MotuPS Case No. 17 of 2012.
4. Opposite Party No. 2-(Informant) has filed an affidavit under Order 18 Rule-4 of CPC on 27.11.2018 stating therein that the dispute has been amicably settled between the Petitioners and her. Hence, she is no longer interested to proceed the aforesaid case. It has been further submitted that the marriage between Minakshee

Biswas and Abhijit Biswas has already been dissolved under Section 13(B)(1) of the Hindu Marriage Act, 1955 through mutual consent.

5. It is well settled that the High Court in exercising its powers under Section 320Cr.P.C can compound the offences which are non-compoundable under the Code on the ground that there is a compromise between the accused and the complainant but on rarest of the rare cases. The Supreme Court has laid down parameters and guidelines for High Court while accepting settlement and quashing the proceedings. In **Narinder Singh &Ors v. State of Punjab &Anr.**¹, Hon'ble the Supreme Court has observed as under:

31. 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:

(I) 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.

(II) When the parties have reached the settlement and on that basis petition for quashing the

¹(2014) 6 SCC 466.

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.

(III) 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 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.

(IV) 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.

(V) 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.

(VI) Offences under Section 307 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code. 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.

(VII) 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 Indian Penal Code 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 Indian Penal Code 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.”

6. Also, in the case of **Gian Singh v. State of Punjab and another**², the Hon'ble apex Court has iterated that:

“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 crimedoeer 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

²AIR 2012 SC (CRI) 1796.

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.

55. B.S. Joshi and others v. State of Haryana and another³, Nikhil Merchant v. Central Bureau of Investigation and another⁴, Manoj Sharma v. State and others⁵ and Shiji alias Pappu and others vs. Radhika and another⁶ do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji alias Pappu, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

7. In view of the fact that the Informant (Opposite Party No. 2) and Petitioners have already settled their dispute amicably, the Opposite

³(2003) 4 SCC 675

⁴(2008) 9 SCC 677

⁵(2008) 16 SCC 1

⁶(2011) 10 SCC 705

Party No.2 does not want to proceed with the prosecution further against the Petitioners in connection with G.R. Case No.93 of 2012 pending before the learned J.M.F.C., Motu at M.V.79. Accordingly, there is hardly any chance of conviction of the Petitioners and in such event, it will amount to abuse of the process of the court in case the criminal proceeding is allowed to continue further.

8. Accordingly, this Court allows the CRLMC and quash the order of cognizance dated 04.12.2012 against the petitioners in connection with GR Case No. 93 of 2012 pending before the learned J.M.F.C., Motuat M.V. 79.

9. The CRLMC is accordingly disposed of.

10. Urgent certified copy of this order be granted on proper application.

(S.K.Panigrahi)
Judge