

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.220 of 2014

Sayed Akbar Ali & others. ***Petitioners***

-versus-

State of Odisha & another. ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

ORDER
12.07.2022

Order No.

04.

1. This matter is taken up through Hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the petitioners to quash the entire criminal prosecution in G.R. Case No.1099 of 2012, arising out of Cuttack Sadar P.S. Case No.166 of 2012, pending in the Court of the learned J.M.F.C.(R), Cuttack. The offences alleged against the petitioners are punishable under Sections 363, 366, 354, 323, 342 and 506/34 of IPC.
3. Heard the learned counsel for the petitioners and the learned counsel for the opposite party no.1-State. None appears for the opposite party no.2.
4. Learned counsel appearing for the petitioners submits that since the petitioner no.1 and the daughter of the Informant-opposite party no.2 are staying together as husband and wife

and leading a happy conjugal life, so also they are blessed two children, the aforesaid proceeding may be quashed as no useful purpose is going to be served to continue with the same inasmuch as hereinafter there shall be bleak chance of conviction.

5. Learned counsel for the State does not oppose such submissions and submits that pursuant to the direction of this Court, he has obtained a report from the I.I.C., Cuttack Sadar Police Station wherein it has been stated that the dispute between the petitioner no.1 and the daughter of the opposite party no.2-Informant has been compromised and both of them are presently living peacefully as husband and wife being blessed with two children. The victim in her statement recorded under Section 164 of Cr.P.C. has stated that she has married the petitioner no.1, but her father has foisted a false case. Victim was then seventeen years of age.

6. No doubt, some of the offences are non-compoundable in nature. Non-compoundability of an offence, however, does not stand on the way of the Court for quashment of the proceeding in appropriate cases in exercise of power under Section 482 of Cr.P.C. In this regard, the Apex Court in the case of ***Narinder Singh and others vrs. State of Punjab and another***, reported in (2014) 6 SCC 466 taking note of almost all the earlier decision, such as, *Gian Singh vrs. State of Punjab*, (2012) 10 SCC 303, *B.S. Joshi vrs. State of Haryana*, (2003) 4 SCC 675, *Rajendra Harakchand Bhandari vrs. State of Maharashtra*, (2011) 13 SCC 311, *Dimpey Gujral vrs. UT*,

Chandigarh, (2013) 11 SCC 497, Shiji vrs. Radhika, (2011) 10 SCC 705, State of Rajasthan vrs. Shambhu Kewat, (2014) 4 SCC 149, in paragraph-29 have held as follows :-

“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 its 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 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 aground 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.”

So also, the Apex Court in the case of *Fazle Gaffar Khan and others vrs. State of West Bengal and another*, in Criminal Appeal No.966 of 1999, have held as follows:-

“The appellant faces criminal proceedings on a charge under Section 366 IPC on the allegation that he kidnapped a minor girl. On the basis of the first information report (FIR) the police took up the investigation and submitted a final form. A protest petition being filed by the complainant, the Magistrate treated it as a complaint and took cognizance. The accused moved the High Court under Section 482 Cr.P.C. for quashing of the proceedings. The High Court having refused to quash the proceedings, the present appeal has been filed in this Court. An affidavit of the girl has been filed clearly stating therein that she was married to the appellant-accused. In view of such affidavit, the Court had issued notice pursuant to which the State entered appearance, but the complainant did not make any appearance. In the light of the said affidavit of the girl admitting the marriage between her and the present appellant and the statement made by Ms Indira Jaising, learned Senior Counsel appearing for the appellant that a child has been born, we think it in the interest of justice to quash the criminal proceedings. We, therefore, allow this appeal and direct that the criminal proceedings be quashed.”

7. Report furnished by the I.I.C., Cuttack Sadar Police Station indicates that the petitioner no.1 and daughter of the opposite party no.2-Informant are staying together as husband and wife and living peacefully. In her 164 Cr.P.C. statement the victim stated the case to have been falsely foisted by her father

against the petitioner no.1 whom she has married and staying as his wife. No material is produced to show that the evidence of the victim has since been recorded. In such premises, there is bleak chance of conviction in this case. So, the continuance of the prosecution shall be an abuse of the process of the Court. Otherwise also, the petitioner no.1 and the victim being staying together as husband and wife and are living peacefully and for the ends of justice, quashment of the prosecution against the petitioners is also required to be made.

8. I would, therefore, allow this Criminal Misc. Case application and quash the aforesaid prosecution launched against the petitioners. The trial court shall do well to comply with this order on production of the certified copy of this order.

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

(S. Pujahari)
Judge

MRS