

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1534 of 2010

Papu Swain & another* *Petitioners

-versus-

State of Odisha & another* *Opposite Parties

CORAM: JUSTICE S.PUJAHARI

**Order
No.**

**ORDER
29.04.2022**

13. 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 criminal proceeding as well as the impugned order taking cognizance in connection with G.R. Case No.216 of 2005/Trial No.1109 of 2006 pending in the court of J.M.F.C (P), Kujang under Sections 341/323/325/294/354/506/34 IPC and Section 3(i)(x)(xi) of the SC & ST (P.A) Act.
3. Heard learned counsel for the Petitioners and learned counsel for the Opposite Party No.2.
4. On 15.03.2022, this Court directed the State counsel to obtain instruction from the concerned Police Station whether the matter has been amicably settled between the parties and directed both the parties to be present on the date fixed. Pursuant to the said order, learned counsel for the State submits that he has got instruction from the concerned Police Station that the

matter has been amicably settled between the parties. Both the parties have also appeared in person and filed their respective Aadhaar cards duly attested by them as well as by their advocates. The same be kept on record.

5. Some of the offences alleged in this case are non-compoundable. But notwithstanding the same when compromise has been made between the parties, in appropriate cases this Court can quash the proceeding in exercise of the inherent power conferred on this Court under Section 482 Cr.P.C.

6. In the case of *Narinder Singh and others vrs. State of Punjab and another*, reported in (2014) 6 SCC 466, wherein the apex Court 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 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.”

7. Taking note of the aforesaid authoritative pronouncement of the apex Court with regard to quashment of the proceeding of non-compoundable offences on the ground of compromise, in exercise of the power of this Court under Section 482 of Cr.P.C. when the case of the Petitioners is addressed, it appears to this Court that though some of the offences are non-

compoundable in nature but, as stated earlier, the same arose during the settlement of the dispute and the Complainant in this case does not want to proceed with the criminal proceeding further. The evidence in the aforesaid case is yet to commence. In such circumstances when the Complainant in this case does not want to proceed with the matter, there would be bleak chance of conviction. The offences alleged are also not serious in nature.

8. I would, therefore, in the aforesaid factual backdrop and also taking note of the ratio laid down in the case of *Narinder Singh and others* (supra), allow this Criminal Misc. Case and quash the impugned order of cognizance in connection with G.R. Case No.216 of 2005/Trial No.1109 of 2006. Consequently, the prosecution launched against the Petitioners in the said case stands closed. The trial court shall do well to comply with this order on production of the certified copy of the same.

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

(S. Pujahari)
Judge