

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2952 of 2016

***Sidhartha Siladitya Padhi and
others*** ***Petitioners***

-versus-

State of Odisha and another ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

**ORDER
27.07.2022**

Order No.

06. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this application under Section 482 of Cr.P.C. have sought for quashment of the entire criminal proceeding arising out of Bhubaneswar Mahila UPD P.S. Case No.165/2013, corresponding to C.T. Case No.2640/2013, pending in the court of S.D.J.M., Bhubaneswar, in the interest of justice.
3. Heard the learned counsel for the petitioners and the learned counsel for the State.
4. Since it is stated that in the meanwhile petitioner no.2 has already been died, the case against him stands abated.
5. As it appears, a P.W.D.V. Act case has been initiated at the instance of the wife against the husband, the same was disposed of in terms of compromise entered into between the parties/judgment dated 2.4.2016, passed in C.M.C. No. 19/2014

by the J.M.F.C., Bhubaneswar. The said compromise reveals that both the parties have jointly agreed to settle their disputes amicably pursuant to which all the pending cases, both civil and criminal except C.T. No.2640/2013, pending in the file of S.D.J.M., Bhubaneswar have been disposed of. The wife also agreed to withdraw Bhubaneswar Mahila UPD P.S. Case No.165 of 2013 at her instance, against which the aforesaid case has been registered.

6. Learned counsel for the Petitioners files the said agreement of settlement between the parties and in spite of the same, the wife-O.P. No.2 has not turned up in this case though she had agreed to withdraw the case registered against her husband-Sidhartha Siladitya Padhi and others. As such, the learned counsel for the Petitioners seeks indulgence of this Court for quashing of the proceeding by filing this Petition under Section 482 Cr.P.C.

7. Learned counsel for the Petitioners submits that though the wife agreed to withdraw the case, but she did not turn for the same nor she cooperate in this case for the said purpose. Even though amicable settlement of D.V. proceeding was executed between the parties contending the said terms that the wife shall withdraw Bhubaneswar Mahila UPD P.S. Case No.165/2013 against the husband, but nothing has been mentioned about the other respondents-opposite parties. Once the case is allowed to be quashed against the husband-petitioner no.1, the continuance of further proceeding against the other petitioners would be an abuse of the process of court, submits

the counsel for the petitioners. In such premises, he submits to quash the aforesaid criminal prosecution.

8. Learned counsel appearing for the State, however, vehemently objects the same on the ground that serious allegations have been made against the Petitioners and the criminal proceeding should not be quashed, particularly when the case is one where offence under Section 307 of IPC has been alleged.

9. 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.”

10. Reverting back to the case at hand, it appears that here in this case, trial has neither begun nor the petitioners have been convicted for any charge. The case arises out of a marital discord. The wife though settled the matter, but refused to turn of to quash the proceeding. She also did not respond to the notice to have her say in this case. In the case of ***Ruchi Agarwal vrs. Amit Kumar Agrawal and others***, reported in (2005) 3 SCC 299 and also in the case of ***Mohd. Shamim and others vrs. Nahid Begum (Smt.) and another***, reported in (2005) 3 SCC 302, wherein the case of ***Ruchi Agarwal*** has been followed, the

Apex Court in a similar facts and situation have quashed the criminal proceeding.

11. For the aforesaid reasons, this Court is of the view that continuance of the proceeding against the petitioners at the instance of the opposite party no.2 shall be an abuse of the process of Court.

12. I would, therefore, allow this Criminal Misc. Case application and quash the proceeding against the petitioners in C.T. No.2640 of 2013, arising out of Bhubaneswar Mahila UPD P.S. Case No.165 of 2013 pending on the file of the learned SDJM, Bhubaneswar. The trial court shall do well to comply with this order on production of the certified copy of this order.

13. Issue urgent certified copy as per rules.

(S. Pujahari)
Judge

Uks