

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No. 984 of 2009

An application under Section - 397, Section - 401 read with Section - 482 of the Code of Criminal Procedure in connection with G.R. Case No. 34 of 2008 in the file of the S.D.J.M., Sonapur.

1. Biswa Prakash Mahapatra
2. Padma Charan Subahu Singh
3. Manbodh@Manabodha Bhoi **Petitioners**

-versus-

1. State of Orissa
2. Jaya Shankar Achary **Opp. Parties**

Advocates appeared in this case through Hybrid Mode :

For Petitioner	: Mr. Santosh Ku. Nanda, Advocate
For Opp. Party	: Mr. Sibani Shankar Pradhan, Addl. Govt. Advocate (For O.P.No.1) Mr. B.S. Rayaguru, Advocate (For O.P.No.-2)

CORAM:

JUSTICE SAVITRI RATHO

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Date of Judgment : 29.04.2022
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Savitri Ratho, J The petitioners namely, Biswa Prakash Mahapatra, Padma Charan Subahu Singh and Manbodh @Manabodha Bhoi have filed this Criminal Revision petition challenging the order dated 29.06.2009 passed by the learned S.D.J.M., Sonapur in G.R. Case No.34 of 2008 taking

cognizance of offences under Sections 406/409/34 of the I.P.C. against the petitioners.

2 The petitioner no.1 was the Managing Director of Orissa Corporation Marketing Federation Ltd., Petitioner No.2 was the Assistant Registrar Cooperative Societies-cum-Management I/c, CARD Bank, Sonepur (Sonepur Cooperative and Rural Development Bank) and Petitioner No.3 was the Secretary of CARD Bank, Sonepur officiating since 01.04.2007 till date. Petitioner No.3 is a Class-III employee of the CARD Bank and Petitioner Nos.1 and 2 are Government Officers. .

3. The allegations in brief as contained in the FIR are that one Jay Shankar Achary of Dherapada, Sonepur who was an employee of CARD Bank and taken voluntary retirement, had filed 1 C.C. Case No. 08 of 2008 against the petitioners before the learned S.D.J.M., Sonepur with allegation to the effect that while the complainant has served the CARD Bank for 30 years and taken voluntary retirement since 31.05.2007, after retirement the complainant has not received his contribution to the Provident Fund (C.P.F.) dues though the same was deducted from his salary when he was in service. He had approached the petitioner no.3, who the present Secretary of the Bank but he avoided to make the payment. He served Advocate Notice on petitioner no.3 but the latter made some false

excuses. The learned S.D.J.M., Sonapur under Section 156 (3) of Cr.P.C. sent the complaint case for registration of F.I.R. and Sonapur P.S. Case No. 08 dated 22.02.2008 was registered against the three petitioners, under Section 406/34 of the I.P.C.

During pendency of the investigation, the dues of the complainant were paid on 01.11.2008 for which an application was filed by the complainant - Opp. party No.2 Jay Shankar Achary before the learned S.D.J.M., Sonapur stating that he does not want to proceed with the case as he has received all his dues. But this prayer was rejected by the learned SDJM holding that the investigation is still in progress and final report was yet to be received, it was a case under Section 406 of I.P.C. which is triable by warrant procedure for which the petition appeared to be premature and not in accordance with law. The petitioners had approached this Court in CRLMC No 2835 of 2008 challenging the said order but the same was withdrawn on 12.02.2009 as investigation was still pending.

Thereafter charge sheet dated 17.06.2009 for commission of offences under Sections 406/409 read with Section 34 of the I.P.C. was submitted and the learned S.D.J.M., Sonapur took cognizance of the offences under Sections 406/409 read with Section 34 of the I.P.C. against the petitioners and issued summons to the petitioners .

4. The learned counsel for the petitioner submits that the order of cognizance has been passed mechanically as the complainant had approached the Court before submission of chargesheet for withdrawing the case as he had received his dues and had filed an application on 01.11.2008 before the learned SDJM (Annexure 4) stating that he did not wish to proceed with the case . His alternate submission is that specific allegations are not available against Petitioners No.1 and 2 and even assuming the allegations to be true , the ingredients of section 406 or 409 IPC are not made out against any of the petitioners . His alternate submission is that even assuming for a moment that no fault can be found with learned S.D.J.M. for taking cognizance of the offences as the offences under Section – 406/409 of the I.P.C. are not compoundable , but in view of the decisions in the case of *Ram Gopal vs. State of Madhya Pradesh* reported in 2021(2) OLR SCC 807 and *Gian Singh vs. State of Punjab* reported in (2012) 10 SCC 303, in exercise of its inherent power, this court can quash the order of cognizance and further proceedings, as the complainant - informant has received his dues and does not wish to proceed with the case.

5. Learned counsel for the State does not dispute the position of law regarding scope of inherent power of this Court to quash proceedings involving non-compoundable offences on the ground of settlement but

submits that in a revision, proceedings involving non compoundable offences cannot be quashed and that even assuming that the Court can exercise inherent power, it should not quash the proceedings merely because the complainant does not wish to proceed with the case, but should consider the nature of allegations against the accused - petitioners. He relies on the decision of the Supreme Court in the case of **State of Madhya Pradesh vs. Laxmi Narayan** reported in (2019) 5 SCC 688 in support of his submissions.

6. Mr B.S. Rayaguru learned counsel appearing on behalf of the Opp. party No.2 (complainant-informant) submits that the dues of Opp Party no 2 have been paid since long and after payment of the same , he had approached the Court of the learned SDJM Sonapur with an application to withdraw the case but the prayer was rejected mainly on the ground that investigation was in progress and that the case involved an offence under Section – 406 of the I.P.C. Without considering his intention of not proceeding with the case , the police has filed chargesheet and the learned SDJM has taken cognizance of the offences.

Learned counsel further submits that since Opp party No 2 has no intentions of proceeding against the petitioners, but he will be unnecessarily summoned to the Court leading to wastage of valuable time and resources of the Court as well as wastage of his own time .

7. The decisions in the case of ***B.S.Joshi vs. State of Haryana*** reported in (2003) 4 SCC 675; ***Nikhil Merchant vs. Central Bureau of Investigation and Another*** reported in (2008) 9 SCC 677 and ***Manoj Sharma vs. State and Others*** reported in (2008) 16 SCC 1 were doubted by a two judge Bench in ***Gian Singh vs. State*** :(2010) 15 SCC 118 on 23.10.2010 and hence the matter was referred to a larger Bench and the reference was answered by a three judge Bench in ***Gian Singh vs. State of Punjab & Anr.***: (2012) 10 SCC 303. After referring to and discussing a catena of its own decisions as well as of various High Courts, the Supreme Court held that the decisions in ***B.S. Joshi*** (supra), ***Nikhil Merchant*** (supra) and ***Manoj Sharma*** (supra) could not be said to be not correctly decided. The relevant portions of the decision are extracted below:

...“61. *The position that emerges from the above discussion can be summarized 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 proceedings.”

In the case of **Nikhil Merchant** (supra) the Supreme Court had held as follows :

... “28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it

to part with additional amounts of credit to which the Company was not otherwise entitled.

*29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under sub-section (2) of Section 320 CrPC with the leave of the court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in **B.S. Joshi** case becomes relevant.*

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal

proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.”...

In the case of **Ram Gopal** (supra) compromise had been entered into after conviction of the accused for commission of non compoundable offence like Section- 307 IPC and other offences under the I.P.C wherein the Supreme Court inter alia held as follows:

“...18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the

Constitution embraces this Court with copious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sublime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

20. Having appraised the afore stated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us, we are inclined to invoke powers under Article 142 and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that:

Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature;

Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest;

Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed;

Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s);

Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties;

Sixthly, since the Appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any ill will and have no vengeance against each other; and

Seventhly, the cause of administration of criminal justice system would remain unaffected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.”

In the case of **Laxmi Narayan** (supra) this Court has held as follows:

“13. 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:

- i) 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;*
- ii) 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;*
- iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) 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/delegate 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 paragraphs 29.6 and 29.7 of the decision of this Court in the

case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) 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 impart 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.

14. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the

eyes of law. The High Court has also failed to note the antecedents of the accused.”..

In the present case the complainant-informant, has made specific allegations against Petitioner no.3 only . The matter has been settled between the parties since long. Merely because the offences are not compoundable under Section 320 of the Cr.P.C, , this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings as the continuance of the same after the compromise arrived at between the parties would be a futile exercise (as decided in the case of **Nikhil Merchant** (supra)). That apart this case will not come under the category of cases which the Supreme Court took exception to in the case of **Laxmi Narayan** (supra) . Therefore in my opinion , this is a fit case for exercising inherent power under Section – 482 of the Cr.P.C to quash the proceedings.

8. Now to deal with the objection of the learned counsel for the State pertaining to quashing of a non compoundable offence in exercise of revisional power.

Faced with a similar situation , the Supreme Court in the case of **Popular Muthiah vs. State Represented By Inspector of Police** reported in **(2006) 7 SCC 296** while framing the following amongst many questions :

.... “ii) Whether only because of the fact that the appellate power of the High Court in terms of Sections 374(2), 386 and 391 does not contain any specific power to direct further investigation, the High Court lacked jurisdiction from seeking recourse to its inherent and supervisory powers under Sections 482 and 483 of the Code of Criminal Procedure in a case of this nature?

has set the matter to rest . After referring to its earlier decisions in the cases of **Dinesh Dutt Joshi vs. State of Rajasthan and Another, [(2001) 8 SCC 570 , State Through Special Cell, New Delhi vs. Navjot Sandhu Alias Afshan Guru and Others : (2003) 6 SCC 641** and other decisions , has held as follows :

.... “The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) *Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.*

(iii) *It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists”*

.... “So far as inherent power of the High Court is concerned, indisputably the same is required to be exercised sparingly. The High Court may or may not in a given situation, particularly having regard to lapse of time, exercise its discretionary jurisdiction. For the said purpose, it was not only required to apply its mind to the materials on records but was also required to consider as to whether any purpose would be served thereby.”

In the case of **Dinesh Dutt Joshi** (supra) , the Supreme Court has held as follows :

*... “The principle embodied in the section is based upon the maxim: **quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest** i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any*

new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases.".....

... "The decisions of this Court emphasised the fact that there exists a distinction between two classes of cases, viz., (i) where application of Section 482 is specifically excluded and (ii) where there is no specific provision but limitation of the power which is sought to be exercised has specifically been stated."

The Supreme Court in the case **Navjot Sandhu Alias Afshan Guru** (supra), has held as follows :

*...."Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in **Satya Narayan Sharma** case this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only*

in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

The present revision application has been filed under section 397 Cr.P.C, 401 Cr.P.C read with Section – 482 Cr.P.C. It is pending since the year 2009 and the further proceedings have been stayed since then. About thirteen years have elapsed in the meanwhile. When the complainant – informant has filed an application in the Court of the learned S.D.J.M. stating that he does not want to proceed with the case as all his dues have been paid and reiterated the same thing before this Court , the chances of conviction of the accused-petitioners in the trial will be bleak. Therefore, refusing to exercise inherent power under Section -482 Cr.P.C for

quashing the proceedings in these circumstances especially when the Supreme Court has in a number of decisions quashed similar proceedings before commencement of trial and even after conviction , would in my opinion amount to a travesty of justice and wastage of valuable resources and time of the Court . I consider this to be a fit case for exercise of inherent power under Section – 482 of the Cr.P.C to quash the impugned order dated 29.06.2009 passed by the learned S.D.J.M., Sonepur in G.R. Case No.34 of 2008 , taking cognizance of the offences under Sections 406/409/34 of the I.P.C. against the petitioners.

9. In view of the aforesaid discussion and the decisions of the Supreme Court referred to above , the impugned order dated 29.06.2009 passed by the learned S.D.J.M., Sonepur in G.R. Case No.34 of 2008 , taking cognizance of the offences under Sections 406/409/34 of the I.P.C. against the petitioners is quashed in exercise of power under Section 482 Cr.P.C .

10. The Criminal Revision is accordingly allowed.

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(Savitri Ratho)

Judge

Orissa High Court, Cuttack
Dated 29th April, 2022 / pusp