

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1381 of 2015

AFR

**Akshya Ray and
another**

....

Petitioners

-versus-

**State of Odisha &
another**

....

Opp. Parties

For petitioners : Mr. B.B.Rath, Advocate

For opposite parties : Mr. S.N.Das,
Add. Standing Counsel

Mr. A.K. Ray, Advocate
(For O.P. No.2)

**CORAM:
MR.JUSTICE G. SATAPATHY
ORDER**

Date of hearing:25.08.2022 Date of Order: 24.09.2022

The petitioners herein by an application U/S. 482 Cr.P.C. have sought for to quash the criminal proceeding initiated against them in Bari Ramchandrapur P.S. Case No. 13(7) dated 14.02.2007 for commission of offences U/Ss. 452/379/427/323/307/34 of I.P.C. read with Section 9(B) of I.E. Act and 127(A) of R.P. Act on the ground of settlement dispute amicably amongst themselves.

2. The facts in synopsis are that on 14.02.2007 at about 9 A.M. in the morning, the petitioners called the

informant to join in a political rally of Congress party but the informant replied that he is a sweet stall owner and should not join in any rally and being annoyed, the petitioners threw away some sweets (Rasogola) kept in two cauldron (Kadei) costing approximately Rs.2,000/- and broke away twenty five numbers of glass tumblers and also broke the Asbestos roof as well as damaged other goods of the sweet stall. They also took away cash of Rs.700/-to 800/- approximately and when the informant protested, they slapped and gave fist blows to him. The petitioners thereafter called upon Kailash Mallik(Kai) and Sarat Parida in loud voice to come immediately with crude bombs to kill the informant and on such call, the aforesaid two persons, accordingly, came with crude bombs and threw the bombs from the road aiming at the informant who concealed himself behind a pillar of the stall as a result his uncle Sanatan Sahoo sustained injury on his eye lid and uncle Banamali Sahoo sustained injury on his knee and he also sustained injury on his leg and right hand by the pebbles of the bombs. At the time of occurrence, the father, brother and two uncles of the informant were present at the place of occurrence i.e. inside the sweet stall of the informant.

Basing on the report(F.I.R.) of the informant, Bari Ramchandrapur P.S. Case No. 13(7) of 2007 was registered which was investigated into, resulting in placing of charge sheet against the petitioners and another for commission of offences U/Ss. 452/379/427/323/307/34 of I.P.C. read with Section 9(B) of I.E. Act and 127(A) of R.P. Act and cognizance of aforesaid offences was taken, where after on commitment to the Court of Sessions, C.T.

Case No. 13 of 2015 was registered. Moreover, N.B.Ws. were issued against the petitioners and another co-accused on 17.05.2018 and now the case stands posted to 19.09.2022 for production of accused persons.

3. In order to get rid of the criminal case, the petitioners have filed the present CRLMC U/S. 482 Cr.P.C. to quash the criminal proceeding instituted upon them on the grounds, *inter alia*, settlement of dispute with the informant by intervention of local gentries and well wishers by arraying the informant and State as opposite parties.

In response to the notice of the CRLMC, the opposite party No.2 has entered appearance through his learned counsel and filed counter affidavit admitting about the settlement of the dispute amongst them.

4. In course of hearing of the CRLMC, learned counsel for the petitioners by relying upon the decision in ***Yogendra Yadav & Others Vrs. State of Jharkhand; A.I.R. 2014 S.C. 3055*** submits that since the parties have settled up their disputes by intervention of local gentries, there should not be any bar to quash the present Criminal Proceeding. Learned counsel for the petitioners by drawing attention of this Court to the above decision submits that even if the offences U/Ss. 307 of I.P.C. and 9(B) of I.E. Act are not compoundable in nature but in the present case, High Court in exercise of power U/S. 482 Cr.P.C. can quash the criminal proceeding instituted against the petitioners on the grounds that the petitioners and informant are neighbours and belong to same Grama Panchayat and they have already amicably

settled up the dispute amongst themselves in presence of local gentries and well wishers and they being good neighbours, have already forgotten the mishap and are living in harmony.

5. In controverting the above submissions, learned counsel for the State submits that when the offences are non-compoundable and heinous in nature like offence U/S 307 of I.P.C and Section 9(B) of I.E. Act as alleged against the petitioners in this case, the Court should not quash the criminal proceeding. It is further submitted that the offences U/Ss. 307 of I.P.C. and 9(B) of I.E. Act being heinous and serious offences cannot be treated as a crime against any particular individual, rather a crime against the society and therefore, the present criminal proceeding for commission of offences involving offences U/S. 307 of I.P.C. and Section 9(B) of I.E. Act shall not be quashed. In order to buttress his submission, learned counsel for the State has also relied upon the decision of the Apex Court in ***State of Madhya Pradesh Vrs. Laxmi Narayan and Others; (2019) 5 S.C.C. 688.***

6. After hearing the parties upon perusal of record, it is noticed that the present petitioners have been charge sheeted for the commission of offences punishable U/Ss. 452/379/427/323/307/34 of I.P.C. read with Section 9(B) of I.E. Act and 127(A) of R.P. Act, out of which the offences U/S. 307 of I.P.C. and Section 9(B) of Indian Explosive Act are predominantly heinous and serious offences and have deep impact on the society. There is also no dispute that the offence U/S. 307 of the I.P.C. is non-compoundable in nature. In this case, a report was also called for from the

learned Court concerned about the present status of the case and in response, learned District & Sessions Judge, Jajpur has submitted its report on 23rd August, 2022 indicating therein about issuance of N.B.Ws. against the petitioners, who are accused persons in the case, on 17.05.2018 and posting of case to 19.09.2022 for production of the accused persons.

7. The invocation of jurisdiction U/S. 320 of the Cr.P.C. for the purpose of compounding an offence is not the same, rather distinct from invocation of jurisdiction U/S. 482 of the Cr.P.C. to quash the criminal proceeding on amicable settlement of dispute by the parties and it is clear beyond doubt that the power to quash any criminal proceeding U/S. 482 of the Cr.P.C. can be invoked, even if for non-compoundable offences, provided that if on the face of complaint/F.I.R., or charge sheet together with accompanying documents, no offence is *prima facie* constituted. In other words, the test is that taking the allegations on record as they are, without adding or subtracting anything, if no offence is made out, such criminal proceeding may be quashed by the High Court in exercise of power U/S. 482 of Cr.P.C. to secure the ends of justice or to prevent the abuse of process of any Court.

8. Further, the principle that emerges for exercise of jurisdiction U/S. 482 of Cr.P.C. never makes it obligatory for the High Court to conduct any roving enquiry to find out the admissibility or reliability of any evidence, either documentary or oral at the stage of investigation or before commencement of trial to see reasonable possibility of accusations to be found unsustainable nor is it desirable

at the same time to appreciate the evidence on record in support of the charge. However, in the present case, the sole and whole ground by which the petitioners have sought for to invoke the jurisdiction U/S. 482 of Cr.P.C. to quash the criminal proceeding instituted against them is settlement of dispute between themselves. The High Court while exercising its jurisdiction U/S. 482 of Cr.P.C. in a case where settlement of dispute amongst the parties have been advanced as a ground for quashing the criminal proceeding has to be more careful and cautious, especially when non-compoundable offence U/S. 307 of I.P.C. which is a heinous and serious offence and has deep impact on the society, is alleged but mere incorporation of such section in the F.I.R. or charge sheet without any primfacie materials would not come in the way of High Court to exercise its inherent power to quash the proceeding.

9. Since the petitioners herein have sought for to invoke the inherent jurisdiction of this Court to quash the criminal proceeding instituted against them for offences involving U/S. 307 of IPC and 9(B) of IE Act along with other offences on the sole ground of settlement of dispute amongst themselves, the only question crops up for consideration about justifiability of invocation of inherent power of this Court to quash the proceeding against the petitioners for offences involving non-compoundable offence like 307 of IPC on the basis of facts and circumstance of the present case. The underlying principle by which a criminal proceeding can be quashed on the ground of settlement of disputes between the parties is no more alien to law, which has already been clarified and

enunciated by Apex Court in a plethora of decisions. In such cases, the High Court is not denuded of inherent power to quash a criminal proceeding where there is settlement of dispute amongst the parties to secure the ends of justice or to prevent abuse of process of Court, but such exercise of power must be invoked sparingly and cautiously. In ***Madhu Limaye Vrs. the State of Maharashtra; 1977 (4) SCC 551***, at the outset the Apex Court has noticed the principles to the effect that the inherent power of the High Court should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice. In the oft quoted and most celebrated decision in the matter of exercise of jurisdiction U/S. 482 of Cr.P.C. in ***State of Haryana and others Vrs. Bhajanlal and others; 1992 Supp.(1) SCC 335***, the Apex Court had held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extra-ordinary or inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whim or caprice. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the F.I.R. or the complaint.

10. In coming back to the cases of quashment of non-compoundable offences on the basis of compromise, it is felt apposite to refer to the most recent decision of the Apex Court in ***Daxaben Vrs. the State of Gujarat and others; 2022 Live Law (SC) 642***, wherein the Apex Court has held at paragraphs-38 , 39 and 40 as follows:-

“38. However, before exercising its power U/S. 482 of the Cr.P.C. to quash an F.I.R., criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. **Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim.** Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. **In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and false within the ambit of crime against society.**

39. Orders quashing F.I.Rs. and/or complaints relating to grave and serious offences only on basis of an agreement with the complainant, would set a dangerous precedent, where complaints would be lodged for oblique reasons, with a view to extract money from the accused. Furthermore, financially strong offenders would go scotfree, even in cases of grave and serious offences such as murder, rape, bride-burning, etc. by buying off informants/complainants and settling with them. This would render otiose provisions such as Sections 306, 498-A, 304-B etc. incorporated in the I.P.C. as a deterrent, with a specific special purpose.

40. In criminal jurisprudence, the position of the complainant is only that of the informant. **Once an F.I.R. and/or criminal complaint is lodged and a criminal case is started by the State, it becomes a matter between the State and the accused.** The State has a duty to ensure that law and order is maintained in the society. It is for the State to prosecute offenders. **In case of grave and serious non-compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impact society.”**

(emphasis supplied by bold letters)

11. True it is that quashing of criminal proceeding on the ground of settlement of dispute between the informant-victim and the accused persons has come up before different Courts more than often and it has come before the Apex Court once again in the case of

Parbathbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & others Vrs. State of Gujarat and another; (2017) 68 OCR(SC) 982, wherein a three Judge Bench of Apex Court while summarizing the broad principles on which inherent power of High Court can be invoked has set out the principles for quashing of criminal proceeding on the ground of settlement of dispute at paragraph-15(v),(vii) and (vii) as follows:-

*“(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, **revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;***

*(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. **Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute.** Such offences are, truly speaking, not private in nature but have a serious impact upon society. **The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;***

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;”

12. In coming to situations where and when criminal proceedings involving non-compoundable offences can be quashed by exercise of power U/S. 482 of Cr.P.C., the Apex Court in **Ramgopal and another Vrs. The State of Madhya Pradesh; (2021) 84 OCR (SC) 539** has held at paragraph-13 as follows:-

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences

are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. **On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh & Ors. vs. State of Punjab & Ors. 2014(II) CLR(SC)722; (2014) 6 SCC 466 and Laxmi Narayan (Supra)."**

13. In this case the petitioners have relied upon the decision in the case of **Yogendra Yadav (supra)** to quash the criminal case on the ground of compromise, but the Apex Court at Paragraph-4 of the decision has held as follows:-

*"xxx xx xx In which cases the High Court can exercise its discretion to quash the proceedings will **depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society.** However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such*

proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

14. Similarly on the other hand, the State has relied upon the decision in the case of **Laxmi Narayan (supra)** wherein in a similar situation like the present case, the Apex Court after noticing the law on the point and authorities laid down in a catena of decisions observed at paragraph-15.4 as follows:-

“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 paras 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”.

15. Adverting to the facts of the present case on the

touchstone of the principle laid down by the Apex Court in the decisions referred to above, there appears little dispute that the petitioners have sought for exercise of power to quash the criminal proceeding instituted against them on the ground of compromise and settlement between the parties and accordingly, they have impleaded the informant who is one of the injured as opposite party No.2 who has stated by way of counter affidavit that more than eight years has elapsed since the date of occurrence and they (both the parties) have forgotten the mishap and living in perfect harmony and further continuance of the proceeding may lead to abuse of process of law. It is also stated by him in such counter affidavit that during pendency of the case, the matter was resolved between them(both the parties) in presence of local gentries and well-wishers in order to maintain harmony in our locality and now they (both the parties) are living peacefully without any disturbance. It is reminded here that mere settlement of disputes amongst the parties does not ipso facto enure to the benefit of parties seeking to quash the proceeding, unless the same is permissible in consonance with true spirit of law.

15(i). Admittedly, the informant is not only the sole injured in this case and the record indicates, besides the informant, his two uncles had also sustained injuries but neither they have been impleaded as parties in this case nor is there any document to evident their consent for compromise in this case. Besides, the present dispute cannot be given the flavor civil dispute nor the allegation raised against the petitioners disclose about the dispute amongst the parties to be individual in nature, rather the

transaction having taken place in the sweet stall of the informant can be well said to have had the transaction taken place in a public place. The allegation on record also discloses about the petitioners calling upon the informant to join a political rally which *per se* suggests the transaction to be against the society but not against an individual alone. Moreover, the allegation of throwing crude bomb by the petitioners aiming at the informant resulting in injuries to the informant as well as two other persons and damage to the shop of the informant cannot be brushed aside lightly nor the incorporation of offence U/S. 307 of I.P.C. in this case can be said to have incorporated for the sake of case only. Moreover, the certified copy of police papers produced on behalf of the petitioners itself indicate about submission of charge sheet against the petitioners for different offences including offences U/S. 307 of I.P.C./9(B) of I.E. Act showing accused Subash Ray and Kailash Mallik as absconder. Moreover, the report of the learned District & Sessions Judge, Jajpur in terms of order of this Court discloses about issuance of N.B.Ws. against the petitioners since 17.05.2018 awaiting production of accused persons by 19.09.2022 by itself speaks about the conduct of the petitioners. The above facts coupled with the allegation levelled against the petitioners in peculiar facts and circumstance of the case makes the case of the petitioners distinguishable from the facts of the case relied upon by the petitioners in ***Yogendra Yadav (supra)*** inasmuch as the offence U/S. 307 of IPC is not only heinous and serious offence but also is not a predominantly civil dispute in the peculiar facts and circumstances of the case nor against an

individual alone.

16. A careful conspectus of the record of the case together with discussion made hereinabove, especially when the incorporation of offence U/S. 307 of I.P.C. in this case would lead to a conclusion that the allegation in this case for offence U/S. 307 of I.P.C. being heinous and serious in nature can be treated as a crime against the society but not against the individual alone and the petitioners having failed to produce any material to indicate about consent of other injured except the informant for settlement of dispute and compromise amongst them and taking into consideration the nature of allegation in this case to have a serious impact on the society, this Court does not consider it proper to exercise the power U/S. 482 of Cr.P.C. to quash the criminal proceeding instituted against the petitioners.

In the result, the CRLMC merits no consideration and is accordingly dismissed.

(**G.Satapathy**)
Judge

Kishore