

A.F.R.

ORISSA HIGH COURT: CUTTACK

CRLMC No.3921 of 2016

In the matter of application under Section 482 of the
Criminal Procedure Code, 1973.

Nata @ Natabar Behera Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : Mr. C.R.Satapathy, Advocate

For Opp. Parties : Mr. S.S. Pradhan, AGA,
Mr. B. Tripathy, Advocate
[O.Ps. No. 2 & 3]

P R E S E N T:

HONOURABLE MR. JUSTICE G. SATAPATHY

Date of hearing: 09.12.2022, Date of judgment: 23.12.2022

G.SATAPATHY, J. This is an application under section 482
of Cr.P.C. by the Petitioner seeking to quash the criminal
proceeding pursuant to the FIR in Dharmasala P.S. Case

No. 239 of 2001 corresponding to C.T Case No.369 of 2010 of the Court of learned C.J.M-cum-Assistant Sessions Judge, Jajpur(now pending in the Court of learned Assistant Sessions Judge, Chandikhol) on the ground of amicable settlement between the petitioner (accused person) in one side and, injured victim and informant in other side.

2. Facts in precise are one Sashikala Sahoo lodged an FIR before the OIC, Kuakhia of Out Post against the Petitioner and another alleging against the Petitioner for giving sword blows on the head of her husband on 02.09.2001 at 5PM, while they were waiting for their eldest son at Ghosara near Banka Sahi on a motor cycle. It is also alleged in the FIR that the Petitioner had also given blows on the left and right side of the head of the injured and when the Informant protested, the Petitioner vowed to kill the injured and when one of the eye witness who was fishing nearby

place asked as to why he is inflicting cut wounds on the head of the injured by dealing sword blows, the Petitioner intimidated such eye witness to kill him, and as a result of the sword blows, the injured fell down on the ground and after assault, the Petitioner fled away from the spot.

On the above FIR, investigation ensued which resulted in submission of charge-sheet against the Petitioner for offence under section 307/34 of IPC under which charge was framed against the petitioner, but the Petitioner has approached this Court in this application for quashing the criminal proceeding on the ground of compromise.

3. In the course of hearing of the CRLMC, Mr. C.R. Satapathy, learned counsel for the Petitioner submits that the Petitioner in one side and injured and Informant in other side have amicably settled the dispute between them and the injured as well as the

informant does not want to proceed further in this case and accordingly, they have filed affidavits. On the aforesaid submission, Mr. C.R. Satapathy, learned counsel for the Petitioner prays to quash the criminal proceeding initiated against the Petitioner.

4. Mr. B. Tripathy, learned counsel for the informant and injured echoing the submission of the Petitioner further submits that the Informant as well as the injured has no objection, if the criminal proceeding is quashed against the Petitioner and in support of such contention, he drew the attention of the Court to the affidavits sworn in by Informant Sashikala Sahoo and injured Lakshmidhar Sahoo which are filed in this case.

5. Mr. S.S. Pradhan, learned A.G.A. in contrast submits that the offence alleged against the Petitioner are neither compoundable nor can be quashed as the offence under section 307 of the IPC is not only grave, but also serious and is an offence against society.

Learned A.G.A. by relying upon the decision in the case of ***State of Madhya Pradesh Vrs. Lakshmi Narayan and others; (2019) 5 S.C.C. 688*** prays to dismiss the CRLMC.

6. After hearing the parties upon perusal of record, it is noticed that the present petitioner has not only been charge sheeted for the commission of offences punishable U/Ss. 307/34 of I.P.C. but also charge has been framed against him for such offence, which is predominantly a heinous and serious offence and has 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, learned counsel for the petitioner has produced the certified copy order sheet dated 19.10.2022 in C.T. Case No. 369 of 2010 which reveals about non-execution of NBWA against the petitioner, who is the accused person in the aforesaid

case, which was posted on 25.11.2022 for production of the accused person-cum-petitioner.

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 it is distinct from invocation of jurisdiction U/S. 482 of the Cr.P.C. to quash the criminal proceeding on an amicable settlement of dispute by the parties and it is clear beyond doubt that the power to quash a 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/made out. 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. There is no quarrel over the position of law that while exercising its jurisdiction U/S. 482 of Cr.P.C. in a case where settlement of dispute amongst the parties has been advanced as a ground for quashing the criminal proceeding, the High Court 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 against the accused but mere incorporation of such section in the F.I.R. or charge sheet without any primfacie materials would not stand in the way of High Court to exercise its inherent power to quash the proceeding.

8. Since the petitioner herein has sought for to invoke the inherent jurisdiction of this Court to quash the criminal proceeding instituted against him for offence involving U/S. 307 of IPC 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 petitioner for offence 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 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.

9. 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 falls 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)

10. True it is that quashing of criminal proceeding on the ground of settlement of dispute between the informant & injured and the accused person 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),(vi) 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;"

11. 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).

12. On coming back to the contention of the State, it appears that the learned AGA 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 has 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”.

13. Adverting to the facts of the present case on the touchstone of the principles laid down by the Apex Court in the decisions referred to above, there appears little dispute that the petitioner has sought for exercise of power to quash the criminal proceeding instituted against him on the ground of compromise and settlement between the parties and accordingly, he has impleaded the informant and injured as opposite party Nos.2 & 3 who have filed their responses on 21.11.2022

by way of affidavits stating therein in essence now the matter has already been amicably settled without any coercion and they do not want to proceed in the case further and they do not have any objection, if the matter is quashed. It is reminded that mere settlement of disputes amongst the parties does not ipso facto enure to their benefit seeking to quash the proceeding, unless the same is permissible in accordance with true spirit of law. Admittedly, the informant in this case is not the injured, but the record indicates that the husband of the informant-cum-OP No.3 is the injured, whose injury report has been withheld by the petitioner for perusal of this Court inasmuch as although, the petitioner has produced the certified copy of FIR and charge sheet but has failed to produce the injury report of the injured for reason best known to him. However, the certified copy of charge sheet produced by the petitioner in this case discloses that the petitioner had

allegedly assaulted the injured by means of a sword on his head and left hand causing grievous injury to his person, along with co-accused. The essential ingredient of the offence U/S. 307 of IPC is the mensrea/intention to kill and the aforesaid allegation against the petitioner for causing grievous injury to the injured by allegedly inflicting sword blows on the head of the injured prima facie disclose the required intention/mensrea to constitute such offence. Besides, the present dispute cannot be given the flavor civil dispute nor the allegation raised against the petitioner disclose about the dispute amongst the parties to be an individual in nature, rather the allegation, *per se* suggests the offence to be against the society. Moreover, the certified copy of order sheets of the case produced on behalf of the petitioner itself indicate about framing of charge against the petitioner for offence U/S. 307 of IPC but subsequently, NBWA was issued against the petitioner

for his default in attending the Court, nonetheless charge sheet was placed against the petitioner showing him absconder which by itself speaks about the conduct of the petitioner.

14. A careful conspectus of the allegations on record together with discussion made hereinabove, especially when charge has been framed against the petitioner for offence U/S. 307 of I.P.C. which in the present circumstances of the case may be considered as heinous and serious offence and a crime against the society but not against any individual alone 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 petitioner merely on the ground of amicable settlement between the parties, more particularly when there appears allegation against the petitioner for

assaulting the injured on his head which is a vital part of the body by means of a sword and causing grievous injuries to the injured.

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



Orissa High Court, Cuttack
The 23rd December, 2022, Priyajit