

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.50 of 2020

Arising Out of PS. Case No.-549 Year-2019 Thana- GAYA KOTWALI District- Gaya

SANU AGRAWAL Son of Shyam Sundar Agrawal Resident of Village -
Techno Residency, 4th Floor, Flat No.405, Alpana Bank Colony, Road No.6,
P.S.- Rupaspur, Dist.- Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
HOME DEPT. GOVT.OFBIHAR PATNA
2. The Director General of Police, Patna
3. The Senior Superintendent of Police, Gaya.
4. The Deputy Superintendent of Police Gaya
5. The S.H.O, Kotwali Police Station , Gaya.
6. The Investigating Officer, Kotwali, P.S.- Case No. 549 of 2019, Gaya.
7. Pawan Kumar Son of late Yugal Kisore Agrawal, Resident of Village -
Goenka Lane, K.P. Road, P.S.- Kotwali, Dist.- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anuj Kumar

For the Respondent/s : Mr.Md. Nadim Seraj

Mr. Ravindra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 6 19-07-2023 1. The petitioner has filed the present writ application
for quashing of the FIR bearing Gaya Kotwali PS Case No. 549
of 2019 dated 28-11-2019 registered under Section 420 and 406
of the IPC and Section 138 of the NI Act.
2. As per the allegation the petitioner and informant
had entered into a commercial relationship and in furtherance of



that petitioner borrowed books from the respondent no. 7 worth Rs. 33,45,138/- from the wholesale bookshop of the informant / respondent no. 7. Two security cheques were given by the petitioner to the informant. During the course of transaction the petitioner returned books worth Rs. 18,90,138/- and the balance amount of Rs. 14,55,000/- was to be credited in the account of the informant by the petitioner. The petitioner authorized the informant to use one of the security cheques bearing no. 000247 ICICI Bank, Branch- Hajiganj, Patna for a sum of Rs. 14,00,000/- and for the rest amount of Rs. 55,000/- the petitioner promised to pay in cash. In pursuance of the instruction of the petitioner the respondent no. 7 presented the cheque of 14,00,000/- before his Banker- SBI, Main Branch, Gaya but the same got dishonoured on 31.08.2019.

3. By order dated 24.04.2023 this Court referred the matter with consent of the petitioner and the respondent no. 7 before the Mediation Centre, Patna High Court and in pursuance thereof mediation report in terms of the settlement has been furnished by the learned Mediator stating therein that the dispute between the parties has been resolved through the process of mediation. The terms of settlement as mutually agreed upon by the parties is quoted hereinbelow:-

“1. That Sanu Agrawal has arrived that



he will pay the dues amount of Rs.8,80,000/- (Rupees Eight Lac Eighty Thousand Only) dealing in books business with Pawan Kumar a proprietor of Agrawal Depot. at Laharia Tola, Gaya.

2. That the aforesaid Rs.8,80,000/- (Rupees Eight Lakh Eighty Thousand) amount will be paid to Pawan Kumar in three installments upto November, 2023 through the A/c No.146513100000706, Union Bank of India situated at Chowk Gaya vide Agrawal Book Depot at Gaya.

3. That the said agreement has been made between the parties in view of Criminal Writ Jurisdiction Case No.50 of 2020 pending in the Hon'ble Patna High Court vide order dated 24.04.2023.

4. That the aforesaid contents of the agreement have been read over and explained to the aforesaid parties who have accepted the same.

5. That the terms and conditions have been seen and signature the parties in presence of their learned counsels before the Ld. Mediator Sri Anup Kumar.”

4. Learned counsel for the petitioner submits that the petitioner is ready and willing to pay the amount as per the terms of settlement and the 1st installment towards the total amount of Rs. 8,80,000/- shall be paid by the petitioner within



fifteen days and total compromise amount shall be paid by the end of November, 2023 as per the terms of agreement.

5. Learned counsel for the respondent no. 7 agrees that the present writ application may be decided on the basis of settlement arrived at between the parties.

6. The Hon'ble Supreme Court in a judgment reported in (2017) 9 SCC 641 (Parbatbhai Aahir vs State of Gujrat) has held in paras- 11, 12 & 16 as follows:-

“11. Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In *Gian Singh* [*Gian Singh v. State of Punjab*, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] a Bench of three learned Judges of this Court adverted to the body of precedent on the subject and laid down guiding principles which the High Court should consider in determining as to whether to quash an FIR or complaint in the exercise of the inherent jurisdiction. The considerations which must weigh with the High Court are : (SCC pp. 342-43, para 61)

“61. ... 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



proceeding.”

12. In *Narinder Singh* [*Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] , Dr Justice A.K. Sikri, speaking for a Bench of two learned Judges of this Court observed that in respect of offences against society, it is the duty of the State to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrence. In such a case, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute. The court observed that the timing of a settlement is of significance in determining whether the jurisdiction under Section 482 should be exercised : (SCC p. 484, para 29.7)

“29.7. ... 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....”

This Court held, while dealing with an offence under Section 307 of the Penal Code that the following circumstances had weighed with it in quashing the first information report : (SCC p. 485, para 33)

“33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant / victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute, etc. is not stated in detail. However, a very pertinent statement appears on record



viz. “respectable persons have been trying for a compromise uptil now, which could not be finalised”. This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. ...”

16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to



secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. 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.

16.6. 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.

16.7. 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 insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.



16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

7. Further in a case reported in (2008) 15 SCC 704 (Jagdish Channa vs State of Haryana), the Hon’ble Supreme Court has held as follows:-

“2. The fact that a compromise has indeed been recorded is admitted by all sides and in terms of the compromise the disputes which are purely personal in nature and arise out of commercial transactions, have been settled in terms of the compromise with one of the terms of the compromise being that proceedings pending in court may be withdrawn or



compromised or quashed, as the case may be. In the light of the compromise, it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transactions that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise. We accordingly allow the appeal and quash FIR No.83 dated 12th March 2005 P.S. City Sonapat and all consequent proceedings.”

8. Having regard to the submissions made by the parties and taking into consideration the facts and circumstances, the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, and the fact that the parties have entered into compromise and dispute is purely personal one arising out of a commercial transaction and no public policy is involved, as such, no useful purpose would be served by relegating the petitioner for trial arising out of Gaya Kotwali PS Case No. 549 / 2019.

9. Accordingly, in the interest of justice, the F.I.R. and the entire prosecution arising out of Gaya Kotwali PS Case No. 549 of 2019 is hereby quashed.

10. It is made clear that if the petitioner fails to abide by the terms of settlement, the respondent no. 7 shall be at



liberty to file appropriate petition before this Court for revival of
the F.I.R. and the prosecution.

11. The application stands disposed of.

(Anil Kumar Sinha, J)

praful/-A.F.R.

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