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Crl.A.No.238 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.A.No.238 of 2021

1.Pandiyan
2.Namachivayam
3.Nithiyanandham
4.Thavamani

... Appellants

Vs.

The Deputy Superintendent of Police,
Ulundurpet Sub Division,
Villupuram District.

... Respondent

Prayer: Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure, seeking to set aside the conviction and sentence imposed on the appellants herein by the judgment dated 09.02.2021 passed by the learned Special Sessions Court for SC/ST Act at Villupuram in Special S.C.No.40 of 2015 by allowing this appeal and acquitting the appellants.

For Appellants : Mr.Ma.P.Thangavel

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor



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JUDGEMENT

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This Criminal Appeal has been filed by the appellants seeking to set aside the conviction and sentence imposed on the appellants by the judgement dated 09.02.2021 passed by the learned Special Sessions Court for SC/ST Act at Villupuram in Special S.C.No.40 of 2015.

2. When the case was taken up for hearing, the learned counsel for the appellants submitted that a memo has been filed stating that the fourth appellant died on 09.12.2022. The death of the fourth appellant is therefore recorded. The Registry is directed to carry out the amendments.

3. Further, a Joint Memo of Compromise dated 29.04.2024 has been filed before this Court, which has been duly signed by the appellants 1 to 3 and their counsel and the *de-facto* complainant. The appellants 2 and 3 and the *de-facto* complainant appeared before this Court and they were identified by Mr.M.Elango, SSI, Edaikkal Police Station, Kallakurichi District. Further, the 1st appellant appeared through video conferencing, since he is aged about 72 years and suffered with dislocation of hip joint and fracture of neck of right femur and bedridden.



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4. In the joint memo of compromise, it is stated that with the advice of elders of the family members, by considering the future life of all the parties, family background and status of living, the appellants and P.W.3 namely Kumar injured witness are belonging to same community and they amicably arrived for compromise with the *de-facto* complainant/victims (PW1 and PW2) in order to settle the issue and to save precious time of courts. The same is hereby recorded.

5. The issue of compounding of an offence under Section 307 of IPC was dealt with by the Apex Court in ***Narinder Singh and others vs. State of Punjab and another [2014 (6) SCC 466]***, wherein, the Apex Court after elaborate discussion by referring to various decision on the issue, culled out the principles to be followed which compounding an offence under Section 307 of IPC and the same is quoted hereunder:-

"8. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under Section 320(1) of the Code, no permission is required from



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the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under Section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of offences enumerated in Section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in B.S.Joshi vs. State of Haryana (2003) 4 SCC 675 which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.

9. At the same time, one has to keep in mind the subtle distinction between the power of compounding of offences given to Court under Section 320 of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code. Once, it is found that compounding is permissible only if a particular offence is covered by the



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provisions of Section 320 of the Code and the Court in such cases is guided solitary and squarely by the compromise between the parties, in so far as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment. Such a distinction is lucidly explained by a three-Judge Bench of this Court in Gian Singh vs. State of Punjab & Anr. (2012) 10 SCC 303, Lodha J. speaking for the Court, explained the difference between the two provisions in the following manner:

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of



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indictment.

59. *B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.”*

10. Apart from narrating the interplay of Section 320 and Section 482 of the Code in the manner aforesaid, the Court also described the extent of power under Section 482 of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the offences are not compoundable. In the first instance it was emphasized that the power under Sec. 482 of the Code is not to be resorted to, if there is specific provision in the Code for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised as against the express bar of law engrafted in any other provision of the Code. The Court also highlighted that



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in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

.....

28. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.

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



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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 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, those criminal cases having overwhelmingly and pre-dominantly 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.*



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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 is 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 it 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 later 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



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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 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 a ground 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."

6. The present case squarely falls under the aforesaid parameters and in the right of the above, considering the nature of allegations and in



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view of Joint Memo of Compromise dated 29.04.2024, this Court is of the opinion that no useful purpose would be served in keeping the matter pending and the appellants 1 to 3 and the *de-facto* complainant are permitted to compound the offence alleged as against the appellants 1 to 3/A1 to A3 is concerned.

7. Accordingly, the judgment dated 09.02.2021 in Special S.C.No.40 of 2015 passed by the Special Sessions Court for SC/ST Act at Villupuram is hereby quashed in respect of the appellants 1 to 3/ A1 to A3 alone.

8. Accordingly, this Criminal Appeal stands allowed on the basis of the compromise entered into between the parties in respect of the appellants 1 to 3 and this Criminal Appeal stands dismissed as abated in respect of 4th appellant on the basis of the death memo filed by the appellants 1 to 3. The terms of joint memo of compromise dated 29.04.2024 shall form part and parcel of the records.



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Index : Yes / No

Speaking order / Non-speaking order

NCC : Yes / No

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To

- 1.The Special Sessions Court for SC/ST Act at Villupuram.
- 2.The Public Prosecutor, Madras High Court, Chennai.



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M.DHANDAPANI, J.

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