

Kamalnarayan Sahu And Ors Vs State Of Chhattisgarh And Ors

Court: Chhattisgarh High Court

Date of Decision: Aug. 22, 2019

Acts Referred: Code Of Criminal Procedure, 1973 " Section 320, 482
 Indian Penal Code, 1860 " Section 34, 294, 307, 323, 427, 452, 506
 Arms Act, 1959 " Section 25, 27

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: Prasoon Agrawal, H.S. Ahluwalia, Anshul Tiwari

Final Decision: Disposed Of

Judgement

Sharad Kumar Gupta, J

1. Petitioners have preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the FIR No.101/2019

registered at Police Station Arjunda and all consequential proceedings therewith in the interest of justice.

2. In brief petitioner's case is that respondent No. 2 had lodged a report in PS Arjunda on 16.06.2019 against the petitioners alleging that on 16.06.2019

petitioners had entered in his house, they damaged his Swift car, LED TV, Fridge, Washing Machine, Dining Table, Electric board. They assaulted

respondent No. 3/ complainant anjani Sahu and respondent no. 4 / complainant Aishwari Sahu, they also threatened to kill them, they also abused

them. An FIR No.0101/2019, under Sections 452, 427, 294, 506, 323, read with Section 34, Indian Penal Code (hereafter called as 'IPC') was

registered against petitioners. In the mean time they and respondents No.2, 3 and 4 amicably settled dispute.

3. Counsel for the respondent No. 2, 3 and 4 conceded that respondents No. 2, 3 and 4, and petitioners have arrived at compromise.

4. In Gian Singh v. State of Punjab, [(2012) 10 SCC 303]] in para 61, Hon'ble Supreme Court has observed and held as under:

61. The position that emerges from the above discussion can be summarised 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 proceeding.

5. In *Narinder Singh v. State of Punjab* [(2014) 6 SCC 466], after considering the decision in *Gian Singh v. State of Punjab*, (supra), in para 29.1, Their

Lordships summed up as under:

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 the 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 hand, those criminal cases having overwhelmingly and predominantly 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.

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 are 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/delicate 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 latter

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 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 to 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. In *Parbatbhai Aahir v. State of Gujarat*, [(2017) 9 SCC 641], again Their Lordships have had an occasion to consider whether the High Court can

quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions of

this Court on the point, this Court summarised the following propositions:

(1) Section 482 CrPC 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.

(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 CrPC. The power to quash under Section 482 is

attracted even if the offence is non-compoundable. (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. (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. (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.

(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.

(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. (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. (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 (10)

There is yet an exception to the principle set out in Propositions (8) and (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. In the matter of State of Madhya Pradesh vs. Dhruv Gurjar and Another [AIR 2019 SC 1106] Hon'ble Supreme Court held in para 16.1, which

reads as under:-

16.1 However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320

CrPC. From the impugned judgments and orders, it appears that the High Court has not at all considered the relevant facts and circumstances of the

case, more particularly the seriousness of the offences and its social impact. From the impugned judgments and orders passed by the High Court, it

appears that the High Court has mechanically quashed the respective FIRs, in exercise of its powers under Section 482 CrPC. The High Court has

not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in State

of Maharashtra v. Vikram Anantrai Doshi [State of Maharashtra v. Vikram Anantrai Doshi, [(2014) 15 SCC 29] , the Court's principal duty, while

exercising the powers under Section 482 CrPC to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the

allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used

with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire

conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the respective FIRs by the

High Court in the present cases for the offences under Sections 307, 294 and 34 IPC and Section 394 IPC, Sections 11/13 of the M.P.D.V.P.K. Act

and Sections 25/27 of the Arms Act respectively, and that too in exercise of powers under Section 482 CrPC is just contrary to the law laid down by

this Court in a catena of decisions.

8. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of Gian Singh(Supra), Narinder Singh(Supra), Prabat

Bhai Aahir(Supra) and Dhruv Gurjar(Supra) following legal principles are emerge-

I. The Court while exercising the power under Section 482 of Cr.P.C., neither give the permission for compounding an offence nor accept the

compounding of offence.

ii. While exercising the power under Section 482 of the Cr.P.C., Court can quash FIR/charge sheet/proceedings in those cases where the offence(s)

is/are not compoundable under the provisions of Section 320, Cr.P.C. and where matter has been amicably settled between victim/prosecutrix and

accused, under following guidelines--

(a) To secure the end of justice or to prevent abuse of process of any court;

(b) In heinous and serious offences of mental depravity or offences like murder, rape, dacoity, which are not private in nature and have a serious

impact on society, etc. cannot be fittingly quashed;

(c) Criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing;

(d) 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, to continue with the criminal proceeding or continuation of the criminal

proceeding would tantamount to the abuse of process of law.

(iii) This power is to be exercised sparingly and with caution.

9. In the case in hand, Sections 452, 294, IPC are not compoundable. Section 427, 323, 506 IPC are compoundable without permission of the Court.

10. As per the direction of this Court Additional Registrar (Judicial) recorded the statements of petitioners and respondents No. 2, 3 and 4. They

stated in their statements that they have compromised the matter voluntarily without any fear or pressure, undue influence. Additional Registrar

(Judicial) was satisfied regarding the identification of petitioners and respondents No.2 to 4.

11. Section 323, 427, 506 of IPC are compoundable with the permission of the Court but other sections of IPC are not compoundable. Thus, looking to

this extraordinary situation this Court thinks that it is a fit case where powers under Section 482 of the Cr.P.C. can be extended to section 323, 427,

506 r/d. S. 34 of IPC also.

12. Offences punishable under Sections 323, 452, 427, 294, 506 read with Section 34, IPC are not heinous and serious offences of mental depravity,

they have no serious impact on society. The possibility of conviction in the case in hand is remote and bleak and continuation of the criminal

proceedings would put the petitioners to great oppression and prejudice and extreme injustice would be caused to them by not quashing the FIR. To

continue with the criminal proceedings or continuation of the criminal proceedings would tantamount to the abuse of process. To secure the ends of

justice the intervention of this Court is necessary under this Section. It is a fit case where Court must exercise the inherent powers vested to this

Court under Section 482 CrPC. In these circumstances and looking to the aforesaid Judicial precedents laid down by Hon'ble Supreme Court in the

matter of Gian Singh (Supra) Narindar Singh (Supra), Parbatbhai Aahir (Supra) this Court quash the aforesaid FIR and criminal proceedings pursuant

to it in the interest of justice exercising the power vested to this Court under Section 482 of Cr.P.C.

13. The instant CRMP is disposed of accordingly.