

S.482 CrPC| Mere Incorporation Of S.307 IPC In FIR/Chargesheet Not Ground To Reject Compromise, Nature Of Injury Relevant Factor: J&K&L High Court

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HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

MD. AKRAM CHOWDHARY; J.

CRM(M) 104/2022;CrIM(362/2022);CrIM(798/2022) c/w CRM(M) 263/2022; CrIM No. 809/2022; 10.11.2022

SHEIKH FERAZ AHMAD Vs. Union Territory of J&K & Ors.

Appellant/Petitioner(s) Through: Mr. S.F.Qadri, Sr. Advocate with Mr. Salih Pirzada, Advocate.

Respondent(s) Through: Mr. Sajad Ashraf, GA. Mr. R.A.Jan, Sr.Advocate with Mr. Aswad Attar, Advocate.

J U D G M E N T

1. Through the medium of present petitions filed under Section 482 Cr. PC, petitioners have challenged two FIRs lodged against each other i.e., FIR No. 24/2022 for the commission of offences punishable under Sections 452, 392, 506 IPC registered with Police Station Pahalgam against petitioner in CrM(M) No. 104/2022 and FIR No.15/2022 for the offence punishable under Sections 323, 447, 307 IPC registered with Police Station Nowhatta Srinagar, against petitioners in CRM(M) No. 263/2022.

2. Brief facts of the case giving rise to filing of aforesaid petitions arising out of the impugned FIRs are that the petitioners and the respondents in the aforementioned petitions happened to be the business partners, running Hotel business under the name 'M/S Hotel Royal Hilton', however, on some business dispute between the parties, the partnership came to be dissolved w.e.f., 09.04.2021 by virtue of dissolution issued by Sheikh Feroz Ahmad- petitioner in CRM(M) No. 104/2022. Consequently, the petition under Arbitration and Conciliation Act, 1996 came to be filed before the court of learned Additional District Judge (Bank Cases) Srinagar, wherein certain orders came to be passed restraining the erstwhile partners from operating the Bank accounts of the Firm without permission of the Court. In this regard a civil suit, for grant of permanent injunction, was also filed by the erstwhile partners before the court of learned Additional District Judge Anantnag, wherein it has been admitted that Sheikh Feroz Ahmad- petitioner in CRM(M) No. 104/2022 is having 20% share in the property in question.

3. Argument of learned counsel for the contesting parties is that the dispute between the parties of the erstwhile Firm was purely of a civil nature but unfortunately the same has been given a criminal colour by filing the impugned FIRs. This Court, vide order dated 13.04.2022 passed in CRM(M) No. 104/2022, stayed the investigation in the FIR No. 24/2022.

4. Parties, by virtue of both the petitions filed against each other, are seeking quashment of the aforesaid impugned FIRs.

5. During the pendency of both the petitions, subsequent development has taken place i.e., parties have entered into compromise after they unanimously decided to put the entire controversy to rest. In this regard application bearing CrIM No. 798/2022 came to be filed and in order to settle the issues, fresh deed of reconstitution of partnership business has been incorporated, copy whereof is annexed with the said application.

6. In terms of order dated 18.07.2022, this Court, in proof of the terms of compromise, directed the parties to get their statements recorded before the learned Registrar Judicial. Accordingly, statements were recorded and are placed on record.

7. On perusal of the statements already recorded of the parties, all in one voice have stated that they have entered into compromise and have no grievance against each other; further they have stated that they do not want to prosecute the criminal cases against each other, thus, seek disposal of the aforesaid petitions in light of the said compromise.

8. Heard learned counsel for the parties, perused the material placed on record and considered.

9. A question, in view of the aforesaid factual position, has arisen as to whether this Court has power to quash the proceedings, particularly when some of the offences alleged to have been committed by the parties, are non-compoundable in nature.

10. Learned senior counsel appearing for the petitioners in both the petitions have relied upon certain judgments, more particularly, Supreme Court judgment titled **Gian Singh Vs. State of Punjab & Anr.** reported as **(2012) 10 SCC 303**. While considering the aspect of whether the High Court has power to quash the proceedings when some of the offences alleged to have been committed which are noncompoundable in nature, the Apex Court has observed as follows :-

"57. 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [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 pre- dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that

criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.."

11. Per contra, Mr. Sajad Ashraf, learned GA, opposed the plea raised by the petitioners as complainant and accused and has relied upon the judgment of the Supreme Court of India in '[State of Rajasthan v. Shambhu Kewat](#) reported as (2014) 4 SCC 149', wherein it was held that an offence under [Section 307 IPC](#) is a serious offence and ordinarily should not be quashed by the High Court while exercising its powers under [Section 482 Cr.P.C](#) on the ground that the parties have settled their disputes. The Supreme Court observed as under:-

"15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why [Section 307 IPC](#) is held to be non-compoundable, is because the Code has identified which conduct should be brought within the ambit of noncompoundable offences. Such provisions are not meant just to protect the individual but the society as a whole. The High Court was not right in thinking that it was only an injury to the person and since the accused persons (sic victims) had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is, safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society.

Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful coexistence and welfare of the society at large." (emphasis supplied)

12. Hon'ble Supreme Court in '[Narinder Singh v. State of Punjab](#) reported as (2014) 6 SCC 466', after noticing the judgment in [State of Rajasthan v. Shambhu Kewat](#) (supra) quashed the proceedings under [Section 307 IPC](#) and observed as under:-

"22. Thus, we find that in certain circumstances, this Court has approved the quashing of proceedings under [Section 307 IPC](#) whereas in some other cases, it is held that as the offence is of serious nature such proceedings cannot be quashed. Though in each of the aforesaid cases the view taken by this Court may be justified on its own facts, at the same time this Court owes an explanation as to why two different approaches are adopted in various cases. The law declared by this Court in the form of judgments becomes binding precedent for the High Courts and the subordinate courts, to follow under [Article 141](#) of the Constitution of India. Stare decisis is the fundamental principle of judicial decisionmaking which requires "certainty" too in law so that in a given set of facts the course of action which law shall take is discernible and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance. The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. It has, therefore, support from the human sense of justice as well. The force of precedent in the law is heightened, in the words of Karl Llewellyn, by "that curious, almost universal sense of justice which urges that all men are to be treated alike in like circumstances".

23. As there is a close relation between equality and justice, it should be clearly discernible as to how the two prosecutions under [Section 307 IPC](#) are different in nature

and therefore are given different treatment. With this ideal objective in mind, we are proceeding to discuss the subject at length. It is for this reason we deem it appropriate to lay down some distinct, definite and clear guidelines which can be kept in mind by the High Courts to take a view as to under what circumstances it should accept the settlement between the parties and quash the proceedings and under what circumstances it should refrain from doing so. We make it clear that though there would be a general discussion in this behalf as well, the matter is examined in the context of the offence under [Section 307 IPC](#).

24. *The two rival parties have amicably settled the disputes between themselves and buried the hatchet. Not only this, they say that since they are neighbours, they want to live like good neighbours and that was the reason for restoring friendly ties. In such a scenario, should the court give its imprimatur to such a settlement? The answer depends on various incidental aspects which need serious discourse. The legislators have categorically recognised that those offences which are covered by the provisions of [Section 320](#) of the Code are concededly those which not only do not fall within the category of heinous crimes but also which are personal between the parties. Therefore, this provision recognises where there is a compromise between the parties, the court is to act at the said compromise and quash the proceedings. However, even in respect of such offences not covered within the four corners of [Section 320](#) of the Code, the High Court is given power under [Section 482](#) of the Code to accept the compromise between the parties and quash the proceedings. The guiding factor is as to whether the ends of justice would justify such exercise of power, both the ultimate consequences may be acquittal or dismissal of indictment. This is so recognised in various judgments taken note of above." (emphasis supplied)*

13. In view of the conflict between the two afore-stated judgments, the matter was considered by a larger Bench of Hon'ble Supreme Court in case titled '[State of M.P. v. Laxmi Narayan](#) reported as (2019) 5 SCC 688', and resolved the conflict by observing as under:

"15.4. 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/delicate 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 [Narinder Singh \[Narinder Singh v. State of Punjab, \(2014\) 6 SCC 466 : \(2014\) 3 SCC \(Cri\) 54\]](#) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove."

14. Though accusation of offence under Section 307 IPC is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or

both the parties, there is a tendency to give it a slant of an offence under [Section 307 IPC](#) as well. Therefore, only because FIR/charge-sheet incorporates the provision of [Section 307 IPC](#) would not, by itself, be a ground to reject the petition under [Section 482](#) of the Code and refuse to accept the settlement between the parties. I am, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, this Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under [Section 307 IPC](#), once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties.

15. On perusal of FIR No. 15/2022 registered at Police Station Nowhatta Srinagar on 07.04.2022 for the commission of offences under Sections 447/323 IPC, the complainant had alleged that he was assaulted ruthlessly by the accused on 24.03.2022, however, he was saved by his employees. He did not state anything about any injury on his person. There was also delay of about two weeks in lodging FIR. The offences punishable under Sections 307, 506, 427, 34 IPC were added later. It appears that the complainant had not received any injury on any vital part of his body so as to constitute attempt to murder punishable under Section 307 IPC, otherwise he could have mentioned this fact, in his statement given to the police at the time of lodging of FIR, that too after two weeks of the alleged occurrence. In such a situation there cannot be any chance of conviction under Section 307 IPC, even after trial before the court.

16. Learned GA, on asking of the Court, has produced the case-diary and on its perusal it has been found that since the registration of the case in the month of April 2022, the complainant has not responded to the repeated reminders for being produced before the court of learned Magistrate for recording his statement in terms of Section 164 Cr PC, as a persecution witness. It has also been found that the complainant/victim also failed to cooperate during investigation and to produce any medical proof with regard to any injury on his person as alleged in the FIR.

17. Learned senior counsel for the petitioners have contended that since the parties have settled all the issues, therefore, continuance of the proceedings in the criminal cases arising out of the impugned FIRs are not in the interest of the parties. It is also averred that so far as the criminal cases are concerned, the same could not be compounded because some of the offences disclosed therein are non-compoundable in nature. It is in these circumstances that the petitioners have approached this Court for seeking quashment of the FIRs and the investigation proceedings.

18. On perusal of the aforesaid observations of the Supreme Court in **Gian Singh case** (supra), **Narinder Singh case** (supra) and **Laxmi Narayan case** (supra), it is crystal clear that the dispute, where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court will be within its jurisdiction to quash the criminal proceedings, if it is known that because of the compromise arrived at between the parties, there is remote possibility of securing conviction of the accused. In fact, in such cases, the Supreme Court has clearly observed that it would amount to extreme injustice, if despite settlement having been arrived at by the parties, the criminal proceedings are allowed to continue.

19. Going by the facts of the instant case, it is obvious that the parties-business partners, have entered into a settlement that has been acted upon by the parties, inasmuch as the cases lodged by the parties against each other have been

withdrawn/compromised. Merely because one of the offences i.e. offence under Section 307 IPC is a serious offence, if an end is not put to the criminal proceedings, it would amount to grave injustice to the parties particularly when the compromise has been arrived at between the parties. The continuance of criminal proceedings against the parties, in these circumstances, will be nothing but an abuse of process of law. In this view of the matter, there is no legal impediment in quashing the proceedings against the parties even in respect of the offence under Section 307 IPC, to secure the ends of justice.

20. The admitted position of the case is that both the parties have amicably settled the disputes between themselves and buried the hatchet. Not only this, they say that since they are close relatives having joint properties at various places within and outside J&K, they want to live like good relatives and that was the reason for restoring brotherly ties. In such a scenario, this Court is under obligation to give its imprimatur to such a settlement.

21. Having regard to the aforesaid discussions and legal sanctity as also in the larger interests of the society, both the petitions are allowed.

Accordingly, FIR No. 24/2022 for the offences punishable under Sections 452, 392, 506 IPC registered with Police Station Pahalgam and FIR No.15/2022 for the offences punishable under Sections 323, 447, 307 IPC registered with Police Station Nowhatta Srinagar, and the consequent proceedings emanating therefrom, are hereby quashed.

22. Both the petitions are, accordingly, disposed of along-with all connected application(s).

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