

A.F.R
Reserved

Court No. - 89

Case :- APPLICATION U/S 482 No. - 25082 of 2022

Applicant :- Bundu And 13 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ashok Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Ashok Kumar Singh, learned counsel for the applicants and Dr. S.B. Maurya, learned AGA for the State-respondent.

2. The instant application has been moved by the applicants with a prayer to quash the entire proceeding of criminal case no. 1093 of 2020 under sections 147, 148, 149, 307, 504, 506 IPC, pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Garhmukteshwar, Hapur District Hapur as well as charge sheet dated 26.8.2020 and cognizance order dated 1.10.2020.

Brief facts of the case

3. Opposite party no. 2 lodged FIR of the present case on 7.5.2020 against the applicants under Sections 147, 148, 149, 307, 504, 506 IPC at P.S. Simbhawali District Hapur and according to the FIR, applicants who are 14 in numbers assaulted with intention to commit murder of Inam and Danish (injured persons of the case) and they opened fire from countrymade pistols and in the incident, Inam and Danish sustained serious injuries. After registration of the FIR, investigation of the matter was commenced and during investigation, Investigating Officer recorded the statements of opposite party no. 2, the informant and injured persons Inam and Danish and also recorded the statement of other eye-witnesses and obtained the injury reports of both the injured and submitted charge sheet against the applicants on 26.8.2020 under sections 147, 148, 149 307, 504, 506 IPC.

4. In the incident two persons Inam and Danish sustained injuries and according to the statement of injured-Inam, applicant no. 2 caused fire arm injury to him and Danish through countrymade pistol. Another injured-Danish in his statement recorded during investigation also stated that applicants assaulted them with intention to commit murder and applicant nos. 2 and 6

opened fire from countrymade pistols and due to fire opened by them he and Inam sustained injuries. Injury reports of both the injured persons, Inam and Danish are on record.

5. From the perusal of the injury report of Inam, it appears that he received a lacerated wound bone deep on the right side of scalp and bleeding was present and Doctor also noted that at the time of his medical examination, three episodes of vomiting and one episode of seizure occurred and was advised to C.T. Scan of head. From the perusal of his C.T. Scan report which is copied by the Investigating Officer in the case diary during investigation which is annexed alongwith annexure-2, it reflects that a hemorrhage in right parietal temporal region and depressed fracture of frontal bone was found and according to Doctor, injury was dangerous to life.

6. Another injured-Danish was also medically examined on 15.5.2020 and according to his injury report he sustained one abrasion of right side of forehead and a contusion of right side of upper back of scapular region and according to the Doctor both the injuries were simple in nature and caused by hard and blunt object.

7. From the perusal of the injury report of both the injured persons, it appears that injured Inam sustained serious fire arm injury which was, according to the Doctor who conducted C.T. Scan, dangerous to his life.

8. It appears that after submission of the charge sheet on 26.8.2022, cognizance was taken and notices were issued to the applicants and during the pendency of the case before committal, applicants, opposite party no. 2-informant and injured persons Inam and Danish compromised the matter and in this regard, they executed a compromise on 31.5.2022 (annexed as annexure-6 to the affidavit). Applicants want to quash proceedings pending before trial court on the basis of settlement dated 31.5.2022.

Submissions on behalf of the applicants

9. Learned counsel for the applicants submitted that applicants have been made accused in the present case on the basis of false and frivolous allegations and they neither assaulted nor they caused any injury to anyone but in spite of that charge sheet has been submitted against them in the present matter. He next submitted that applicants and opposite party no. 2, the informant and injured persons are residents of same village and locality and they also having some relation, therefore, with the interference of the respected persons of the locality, they have settled their dispute and in this regard, a compromise has been executed between them on 31.5.2022 which is annexed as annexure-6 to the affidavit in support of the present application and therefore, the proceedings pending against the applicants may be quashed on the basis of

compromise executed between the parties. He next submitted that he is pressing the instant application only on the basis of compromise executed between the parties and not on the merit of the case.

10. Learned counsel further submitted that as both the parties have amicably settled their dispute, therefore, no fruitful result would be served if prosecution will continue as ultimate result of the trial would be the acquittal. He next submitted that if proceeding of the present case is quashed on the basis of the compromise executed between the parties then their relationship would be cordial one and they can live peacefully, therefore, he submits even if, the case is of Section 307 IPC, proceeding pending against the applicants may be quashed on the basis of compromise executed between the parties.

Submissions on behalf of the State

11. Per contra, learned AGA submitted that as there are serious allegations against the applicants and present matter relates to sections 147, 148, 149 307, 504,506 IPC, therefore, on the basis of compromise, proceeding pending against the applicants should not be quashed. He next submitted that although this Court can exercise its power under Section 482 Cr.P.C. to scuttle the proceeding, on the basis of compromise even in non-compoundable offences but where the offences are serious and heinous in nature which affects the society at large then this Court should not quash the proceedings pending against the accused persons on the basis of compromise arrived between the parties. Learned AGA vehemently submitted that there is specific allegation against the applicants who are fourteen in numbers that they attacked upon injured persons, Inam and Danish with intention to commit their murder. Applicant nos. 2 and 6 also opened fire from their respective countrymade pistols and due to the fire opened by them, two persons i.e. Inam and Danish sustained injures and one injury of injured-Inam was on his head which was found dangerous to life, therefore, instant case cannot be said to be a case of private dispute and as applicants attempted to commit murder of two persons with country made pistols, therefore, it is clearly a crime against the society and in such heinous cases, proceedings cannot be nibbed from its bud on the basis of the compromise executed between the accused persons, informant and injured persons, therefore, the instant application moved by applicants being devoid of merit is liable to be dismissed.

Analysis by the Court

11. I have given my anxious consideration on the rival submissions and perused the record of the case.

The brief facts of the case have already been narrated in previous

paragraphs. The gist of the allegation is that applicants who are fourteen in numbers assaulted and tried to commit murder of two persons Inam and Danish and applicant nos. 2 and 6 opened fire from their countrymade pistols and due to the shot made by them, two persons, Inam and Danish sustained injuries. Although injuries sustained by Danish were found simple in nature but injury sustained by Inam on his head was dangerous to life and both the injured persons in their statements, recorded during investigation, categorically stated that all the applicants participated in the incident and according to injured-Inam, applicant no. 2 opened fire while as per injured-Danish, applicant no. 2 and 6 both opened fire from their countrymade pistols and due to the fire opened by them, they sustained injuries. Therefore, from the perusal of the entire evidence available on record, it is apparent that a prima facie cognizable offence under sections 147, 148, 149 307, 504, 506 IPC is made out against the applicants.

12. In case at hand, the question is, whether on the basis of compromise executed between the parties proceeding of such cases can be quashed.

13. The Apex Court in catena of judgements held that this Court can exercise its power vested under section 482 Cr.P.C. beyond the boundaries of Section 320 Cr.P.C. which states that only compoundable offence can be compounded and this Court can even quash the proceedings relate to non-compoundable offences on the basis of the compromise executed between the parties but at the same time Apex Court cautioned that the proceeding of serious and heinous offences which affects the society at large, should not be quashed on the basis of compromise executed between the parties.

14. The three Judges Bench of the Apex Court in **Gian Singh Vs. Punjab**, reported in **(2012)10 SCC 303** discussed the circumstances very elaborately and held that this Court can quash the proceedings in the cases of non-compoundable offences on the basis of settlement arrived at between the parties and observed as follow:-

*“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. **In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC***

or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed”.

15. In **Nareinder Singh Vs. State of Punjab** reported in **(2014) 9 SCC 466**, the Supreme Court held that in case of heinous and serious offences, which are generally to be treated as crime against society, it is the duty of the State to punish the offender. Hence, even when there is a settlement, the view of the offender 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.

16. The Three Judges Bench of the Apex Court in the case of **Parbatbhai Aahir Alias Parbathbhai Bhimsinhbhai Karmur and Others V. State of Gujrat and Another** reported in **[(2017) 9 SCC 641]**, after discussing its earlier judgements observed as follows:-

“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 misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

17. The Three Judge Bench of the Apex Court in **State of Madhya Pradesh V. Laxmi Narayan & Ors.** reported in **(2019) 5 SCC 688** laid down the following principles:-

15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved 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;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;

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 (supra)* should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.”

18. The Apex Court in the case of ***Arun Singh and Others v. State of Uttar Pradesh Through its Secretary and Another*** reported in **2020 (3) SCC 736**, held as under:-

“14. In another decision in *Narinder Singh v. State of Punjab (supra)* it has been observed that in respect of offence against the society it is the duty to punish the offender. Hence, even where there is a settlement between the offender and victim the same shall not prevail since it is in interests of the society that offender should be punished which acts as deterrent for others from committing 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 deterrent punishment. In such cases, 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 and thus may exercise power under Section 482 CrPC for quashing the proceedings or the complaint or the FIR as the case may be.

19. The Apex Court in case of ***Ram Gopal & Another Vs. State of Madhya Pradesh*** reported in **[2021 0 Supreme (SC) 529]** had occasioned to discuss the issue and observed in paragraph -14 as follows:-

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

20. The Supreme Court in case of **Daxaben Vs. The State of Gujarat & others 2022 LiveLaw (SC) 642** observed as follows:-

"38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, 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 FIRs 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 scot free, even in cases of grave and serious offences such as murder, rape, brideburning, etc. by buying off informants/complainants and settling with them. This would render otiose provisions such as Sections 306, 498A, 304-B etc. incorporated in the IPC as a deterrent, with a specific social purpose.

"40. In Criminal Jurisprudence, the position of the complainant is only that of the informant. Once an FIR 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 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 impacts society."

21. The Supreme Court in the case of **P. Dharmraj Vs. Shanmugam and others decided on 8th September 2022 in Crl. Appeal Nos. 1515-1516 of 2022**, after discussing in earlier judgements observed in para-42 as follows:-

"Thus it is clear from the march of law that the Court has to go slow even while exercising jurisdiction under Section 482 Cr.PC or Article 226 of the

Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on others."

22. From the decisions noticed above, the law as it stands is that although this Court can invoke its jurisdiction u/s 482 Cr.P.C. even in non-compoundable offence and can quash the proceedings on the basis of settlement arrived at between the parties even in the cases of non-compoundable offences but while exercising its jurisdiction this Court must consider the fact that whether the proceeding relates to any serious and heinous offences and whether the crime in question has impact over the society. In cases of serious nature which affects the society at large this Court should not exercise its jurisdiction under section 482 Cr.P.C. for quashing the proceedings on the basis of compromise executed between the parties.

23. The three Judges Bench of the Supreme Court in case of **Laxmi Narayan (supra)** specifically observed that an offence u/s 307 IPC is serious offence which affects the society at large and proceedings of such offence should not be quashed on the basis of compromise executed between the parties, however, the Apex Court also held that considering the nature of injury and weapon used proceedings relate to an offence u/s 307 IPC an also quashed by this Court on the basis of settlement arrived at between the parties.

24. Bearing in mind, the above principles laid down by the Apex Court, I would analyze the fact of the present case.

25. The present case relates to the offence u/s 307 IPC in which as many as fourteen accused persons were involved and fire arms weapons were used. Two persons sustained injuries and injury of one injured was found dangerous to life and after investigation, chargesheet against the applicants has been filed u/s 147, 148, 149, 307, 504, 506 IPC. Thus, prima facie it appears that all the applicants with common object participated in commission of crime. Such offences have serious impact upon the society and trial should continue in the public interest and accused persons of such serious and heinous offences should be punished to deter others from committing similar offences. In the case in hand, offences for which applicants are facing prosecution are neither offences arising out of commercial, financial, mercantile, partnership or such similar transactions or has any element of civil dispute, therefore, if in such cases settlement even if arrived at between the accused persons and complainant-injured persons, the same cannot constitute a valid ground to quash the charge sheet or proceeding pending against the accused persons.

26. The case in hand is a State case in which after investigation, complicity of the applicants were found correct and charge sheet against them has been submitted, therefore, it has become a matter between the State and the accused and it is the duty of the State to ensure the law and order and to prosecute offender and in such cases, informant or the victim has no right in law to drop the case of non-compoundable offence of serious and heinous nature which badly affects the society.

27. Therefore in my view the offences alleged to have been committed by applicants are crime against the society and it can not be said that the present dispute is private in nature and does not affect the society at large. Therefore, proceedings of such cases should not be quashed on the basis of settlement arrived at between the parties.

28. Therefore, from the above discussion, I find no merit in the argument advanced by learned counsel for the applicants. Accordingly, the instant application is devoid of merit and is, hereby **dismissed**.

Order Date :-27.9.2022

Ankita