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IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No.1675 of 2003

(Against the Judgment of Conviction and order of sentence dated 20.11.2003 passed by the learned Additional Sessions Judge, FTC-V, Deoghar in S.T. No.281 of 2001, arising out of Madhupur P.S. Case No.191 of 2000, corresponding to G.R. No.435 of 2000.)

1. Ganesh Choudhary
2. Akhileshwar Choudhary … Appellants

Versus

The State of Jharkhand … Respondent

CORAM: HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellants : Mrs. Jasvindar K. Mazumdar, Advocate
For the informant & injured persons : Mr. Vikash Kumar, Advocate
For the State : Mr. Md. Hatim, A.P.P.

Reserved on: 17.11.2021 **Pronounced on: 04.02.2022**

This appeal is preferred against the Judgment of Conviction and order of sentence dated 20.11.2003 passed by the learned Additional Sessions Judge, FTC-V, Deoghar in S.T. No.281 of 2001, arising out of Madhupur P.S. Case No.191 of 2000, corresponding to G.R. No.435 of 2000, whereby and where under the appellant No.1 Ganesh Choudhary is convicted for the offence punishable under Section 324 of IPC and appellant No.2 Akhileshwar Choudhary is convicted for the offence punishable under Section 326 of IPC and further the appellant No.1 was sentenced to undergo rigorous imprisonment for three years and appellant No.2 was sentenced for seven years and also a fine of Rs.2,000/- and in case of default of fine, he will have to undergo further imprisonment of six months.

2. Briefly stating the prosecution story as unfolded in the written application dated 12.10.2000 by the informant Rohit Chodhary (PW-6) addressed to Officer In-charge of Madhupur Police Station, Deoghar, is as under:

The informant Rohit Choudhary stated that on 12.10.2000 at 7.30 A.M., one Laxman Choudhary armed with *lathi,* Baikunth Chaudhary armed with *lathi*, Ganesh Choudhary (Appellant no.1) armed with sword, Kamdeo Chaudhary armed with *Bhala*, Damodar

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Choudhary armed with *lathi*, Akhileshwar Chaudhary (Appellant no.2) armed with *Sabbal* and Sachidanand armed with *Lathi* arrived on plot No.90 area 34 dismal belonging to Nakul Hazam and with the help of labourers started tilling it. Upon objection from Nakul Hazam, the aforementioned persons assaulted him (Nakul Hazam) with *lathi*, fist and slap then Nakul Hazam fled away from there and reached in front of his (informant) door, behind whom all the aforesaid persons chasing him also reached there. He (informant) tried to intervene asking as to why they were assaulting the poor, upon which the appellant no. 2 Akhileshwar Chaudhary became angry and abused him and also assaulted him by a heavy iron, *Sabbal* (rod with sharp end) on his right leg due to which his right leg was fractured and he fell down. Thereafter all the accused persons started assaulting him by *lathi*. Having seen his brother being assaulted, his own brother P.W.1 Krishundeo Chaudhary tried to save him, but the appellant no.1 Ganesh Chaudhary with an intention to kill him, assaulted him by sword on his left side of the head and blood started oozing out from the wound by which he fell unconscious and others continued to assault him and presuming him to be dead, they fled away.

3. On the basis of the aforesaid written application submitted by the informant PW – 6, a formal FIR was drawn vide Madhupur P.S. case No.191 of 2000 , District - Deoghar, registered under Sections 147, 148, 149, 341, 323, 324, 325 and 307 of IPC and investigation of the case commenced. After completion of the investigation, the charge-sheet was submitted, the case was committed to the Court of Sessions and thereafter the charges were framed against the appellants and after the trial, both the appellants named above were convicted and sentenced by the impugned judgment of conviction and order of sentence, which is under challenge.

4. Heard the learned defence counsel appearing on behalf the appellants, the learned counsel Sri Vikash Kumar appearing on behalf of the injured persons including informant and the learned APP appearing on behalf of the State.

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5. The learned defence counsel instead of arguing the case on merit submitted on behalf of the appellants that during the pendency of this appeal, one I.A.(Cr.) No.7698 of 2018 has been filed jointly on behalf of the appellants and injured-informant P.W.6, his injured brother Krishnadeo Chaudhary P.W.1 and Nakul Hazam P.W.2 at whose agricultural field the dispute arose for the compromise of this case in appeal and therefore in the light of the said compromise, it is urged on behalf of the appellants to allow this appeal and in support of his contentions, the learned defence counsel appearing on behalf of the appellants and the learned counsel appearing on behalf injured-informant P.W.6, his injured brother Krishnadeo Chaudhary P.W.1 and Nakul Hazam P.W.2 relied upon the rulings of the Hon'ble Supreme Court in the case of **Narinder Singh & Ors. Vs. State of Punjab & Another** reported in **(2014) 6 SCC 466** and in the case of **Yogendra Yadav & Ors. Vs. State of Jharkhand & Anr**. reported in **(2014) 9 SCC 653.**

6. On the other hand, learned APP appearing on behalf of the State without disputing the factum of compromise, vehemently opposed the contentions and submitted that there is no legal point to interfere in the impugned judgment of conviction and order of sentence as the same is based on cogent and reliable evidences and the learned court below has rightly appreciated evidences available on record and opposed such a recourse raised jointly by the appellants and injured-informant P.W.6, his injured brother Krishnadeo Chaudhary P.W.1 and Nakul Hazam P.W.2 in the light of the non-compoundable offences punishable under sections 324 and 326 of the IPC under which the appellants have been convicted.

Appraisal & Findings

7. Having heard the learned counsels for the respective parties perused the material available on record including the lower court records.

8. Both the appellants namely Ganesh Choudhary and Akhileshwar Choudhary have been found guilty and convicted for the offences punishable under sections 324 & 326 of the IPC respectively. Now it

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is found that informant-injured people and the defence side want to bear good relations and maintain peace despite the fact that the offences under which they have been convicted are non-compoundable offences within the meaning of Section 320 of Cr.P.C. The learned counsels appearing on behalf the appellants and the informant victim side jointly submitted that by virtue of filing a joint compromise application vide I.A. (Cr.) No.7698 of 2018 in this appeal they have resolved their dispute as the offences had arisen out of landed properties dispute between them and all the injured victims namely injured-informant P.W.6, his injured brother Krishnadeo Chaudhary P.W.1 and Nakul Hazam P.W.2 and the accused-appellants have compromised the dispute and all of them wanted to compound the appeal as they want to live peacefully.

9. In view of the aforesaid facts the question before this court is as to whether this court can compound the offences under sections 326 and 324 of IPC which are non-compoundable. At the outset this court proceeds to comprehend a few rulings of Hon'ble Supreme Court as to whether this court taking into the consideration the amenable and distinctive facts and circumstances of the present case can compound the offences punishable under sections 324 and 326 of the IPC which are non-compoundable within the meaning of section 320 of the Cr.P.C. to prevent the abuse of the process of court and/or to secure the ends of justice.

10. The Hon'ble Supreme Court in ***Gian Singh vs.State of Punjab (2012)10 SCC 303*** laid down following principles:

> *"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."*
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> *59.xxx xxx xxx*

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"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

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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."

11. These principles are subsequently reiterated in a number of cases. In ***State of Madhya Pradesh vs. Laxmi Narayan & Ors. (2019) 5 SCC 688*** elaborating the principle the Hon'ble Supreme Court observed in para 15 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;

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15.4. xxx xxx xxx
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."

12. Further in the case of ***Yogendra Yadav & Ors. Vs. State of Jharkhand & Anr. reported in (2014) 9 SCC 653*** recapitulating the Gian Singh's case Principle (*Supra*) it has been observed as under :

"4. ---------- Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab [(2012) 10 SCC 303). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends

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of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

13. As a matter of fact from the aforesaid propositions of law as propounded by the Hon'ble Supreme court in ***Gian Singh's case*** (*Supra*), ***Laxmi Narayan's ca***se (*Supra*), and ***Yogender Yadav's*** Case (*Supra*) it is now well settled that the offences which are non-compoundable cannot be compounded by a criminal Court under the section 320 of the Cr.P.C. In spite of that there is an scope of compounding the offences by invoking inherent powers of the High Court vested in it under section 482 of Cr.P.C. in aid to prevent abuse of the process of any court and/or to secure the ends of justice by taking into consideration the circumstances surrounding the incident, the manner and mode under which the compromise has been arrived at between the parties , and further due consideration to the nature and seriousness of the offence, in addition to the conduct of the accused, before and after the incident. But such power is to be exercised very carefully, diligently and cautiously as observed by Hon'ble Supreme Court in ***Narinder Singh & Ors. Vs. State of Punjab & Anr. reported in (2014) 6 SCC 466,*** as follows :

"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

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principle of judicial decision-making 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 offences under Section 307 IPC."

24. xxx xxx xxx

25. xxx xxx xxx

26. Having said so, we would hasten to add that though it 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

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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. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High 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. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.

14. In the backdrop of well defined limit and boundary for compounding the offences which are non-compoundable in nature, it is manifest that responsive justice is the genesis of delivering justice. In a society governed by rule of law, just and fair expectations of law abiding citizen are the essence of justice delivery system. In a criminal case where offences are of pure personal nature, not heinous or brutal and not adversely affecting the society at large being a private nature and the parties concerned have willingly and voluntarily settled their differences amicably, it would be in the fitness of things that non-compoundable offences can be allowed to be compounded, of course with righteousness and probity irrespective of the fact that the trial has already been concluded and the post conviction compromise has taken place at

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the appellate stage.

15. In the present case it is found that there is a long history of enmity between the parties including prosecution and defence. It is a personal nature of dispute between the parties arising out of the landed properties of one Nakul Hazam pertaining to plot no.90 measuring an area of 34 decimals. In the purported dispute three persons were injured namely informant P.W.6, his brother Krishnadeo Chaudhary P.W.1 and one Nakul Hazam P.W.2. It is found that during the pendency of this appeal a joint compromise application has been filed vide the I.A.(Cr.) No. 7698 of 2018 by all the three injured persons namely injured-informant P.W.6, his injured brother Krishnadeo Chaudhary P.W.1 and Nakul Hazam P.W.2 at one hand and by the appellants namely Ganesh Choudhary and Akhileshwar Choudhary on the other hand supported with affidavits by each of the parties. From perusal of this joint interlocutory application on behalf of the appellants, informant and injured persons, it is found that in this joint compromise petition, it has been stated that during the pendency of this case, the informant, injured persons as well as appellants have entered into a compromise and all the parties concerned have mutually settled their dispute once and for all and they wanted to maintain good and healthy relations being neighbours. Further, it is found that on the intervention of close relatives and well-wishers of both the parties including the appellants and informant people compromised the matter amongst themselves and now the informant and injured persons do not want to proceed with the instant appeal. Under such circumstances it is evident that a mutual compromise has taken place between both the parties with respect to a dispute which is purely a personal nature of dispute between them inasmuch as neither public policy is involved nor any trace of brutality or ruthlessness in the purported offence nor affecting the peace ,tranquillity and conscious of the society and therefore it is a fit case, where this Court can allow the instant appeal be compounded taking into consideration the mutual compromise

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between both the parties as they have settled their entire disputes and differences amicably to dispel their misunderstanding without any coercion and threat as the present joint compromise petition has been filed through the aforesaid interlocutory application willingly and voluntarily by both the parties. Further it is found that the incident took place more than 20 years back and both the parties being neighbours are living in a harmonious atmosphere and hence for the ends of justice let the offences punishable under sections 324 and 326 be compounded under the circumstances of the present case. As a consequence the Judgment of Conviction and order of sentence dated 20.11.2003 passed by the learned Additional Sessions Judge, FTC-V, Deoghar in S.T. No.281 of 2001, arising out of Madhupur P.S. Case No.191 of 2000, corresponding to G.R. No.435 of 2000, is hereby set-aside and this appeal is allowed as compounded. Since the appellants are on bail, they are discharged from the liability of the bail bonds.

16. In result this appeal is allowed as above.

17. The I.A. (Cr.) No. 7698 of 2018 also stands disposed off.

18. Let the Lower Court Record be sent back forthwith to the concerned court below along with the copy of this judgment.

(Navneet Kumar, J.)

Jharkhand High Court, Ranchi,
Dated the 04/02/2022/NAFR
R.Kumar/-