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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 27TH DAY OF APRIL 2021 / 7TH VAISAKHA, 1943

CRL.A.No.1587 OF 2006

AGAINST THE JUDGMENT IN SC 580/2004 DATED 14-07-2006 OF
ADDITIONAL SESSIONS COURT (ADHOC)-II, ERNAKULAM

CP 65/2004 OF JUDICIAL MAGISTRATE OF FIRST CLASS - NORTH
PARAVUR

APPELLANT/ACCUSED NO.1:

SOBAN, AGED 25 YEARS
S/O ANJALOSE, PADAMATTUMMAL VEEDU, CHETTIKKAD
KARA, MOOTHAKUNNAM VILLAGE.

BY ADVS.
SRI.C.P.UDAYABHANU
SRI.NAVANEETH.N.NATH
SHRI.ABHISHEK M. KUNNATHU
SHRI.RASSAL JANARDHANAN A.
SRI.P.U.PRATHEESH KUMAR

RESPONDENT/COMPLAINANT:

1 STATE OF KERALA
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.UDAYAKUMAR K.B

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31-03-
2021, THE COURT ON 27-04-2021 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Dated this the 27th day of April, 2021

Can criminal proceedings involving non-compoundable offence be quashed at post-conviction stage invoking the power u/s 482 of the Code of Criminal Procedure upon a settlement between the convict and the victim? - is the short point falls for determination in this criminal appeal.

2. The appellant along with six others were prosecuted before the Court below for the offences punishable under Sections 143, 147, 149, 326, 307 r/w 149 of I.P.C. on the allegations that they formed themselves into an unlawful assembly armed with deadly weapons and in prosecution of the common object of the assembly assaulted CW1 (victim) with an iron pipe causing injury on his head. After full fledged trial, the Court below found the appellant alone guilty of the offence punishable u/s 326 of I.P.C. and he was convicted for the said offence. He was found not guilty of other offences charged. The accused Nos.2 to 7 were found not guilty of all the offences

charged against them and they were acquitted. The appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹6,000/-, in default, to suffer simple imprisonment for a further period of three months vide the impugned judgment. Challenging the said conviction and sentence, the appellant preferred the above appeal.

3. When the appeal came up for final hearing, the appellant filed Crl.M.A.No.1/2021 under Sections 482 and 320 of Cr.P.C. to quash the entire proceedings and to set aside the conviction and sentence on the ground that the entire dispute has been settled between him and the victim. The application has been supported by the affidavit sworn in by the victim.

4. I have heard the learned counsel for the appellant Sri.C.P.Udayabhanu and the learned Public Prosecutor Sri.Udayakumar K.B.

5. The learned counsel for the appellant Sri.C.P.Udayabhanu submitted that the jurisdiction of this Court deserves to be exercised to quash the entire proceedings in view of the amicable settlement of disputes between the appellant and the victim. The learned counsel further submitted that the inherent powers u/s 482 of the Code of Criminal Procedure (for

short Cr.P.C.) were of wide magnitude and ramification and the same could be exercised for quashing the criminal proceedings of any kind whether compoundable or non-compoundable at any time, even at post-conviction stage, when the convict and the victim had arrived at a settlement. To fortify his submissions, the learned counsel relied upon the following decisions: **Joshi v. State of Haryana** [2003 (2) KLT 1062 (SC)]; **Nikhil Merchant v. Central Bureau of Investigation** [2008 (3) KLT 769 (SC)]; **Manoj Sharma v. State** [2008 (4) KLT 417 (SC)]; **Gian Singh v. State of Punjab** [2012 (4) KLT 108 (SC)] and **Biju Eappen v. State of Kerala** (2010 (1) KLT 289).

6. Section 320 is the only statutory provision in Cr.P.C. for compounding an offence and classifies the offences which are simply compoundable and compoundable with permission of the Court [Ss.320(1) and 320(2)]. The law makers never thought of incorporating any specific provision in Cr.P.C. for compounding of offence other than the offences mentioned in Ss.320(1) and 320(2). However, through judicial intervention, the Apex Court found a solution in cases where accusations are non-bailable and non-compoundable holding that recourse to inherent powers u/s 482 would be permissible even in non-compoundable offences for

quashing an FIR and/or criminal proceedings and the said power is not controlled or moderated by Section 320 of Cr.P.C.

7. The contentious issue as regards the scope of power exercisable under Section 482 of Cr.P.C. when a prayer is made for quashing criminal proceedings involving non-compoundable offences on account of settlement between the parties came up for consideration before the Apex Court initially in **Joshi's case** (supra). Describing the scope of inherent powers, it was held that S.320 of Cr.P.C does not limit or control exercise of powers vested in the Court u/s 482 of Cr.P.C. and the Court would have the power to quash criminal proceedings or an FIR under the exercise of powers u/s 482 even if the offence was non-compoundable u/s 320 of Cr.P.C. The Court drew distinction between compounding an offence as permitted u/s 320 of Cr.P.C and quashing of the complaint or criminal proceedings u/s 482 of Cr.P.C. as also Article 226 of the Constitution of India and held that the powers of the High Court u/s 482 of Cr.P.C to quash criminal proceedings or FIR were not circumscribed by S.20 of Cr.P.C. To the same effect is the decision of the Apex Court in **Nikhil Merchant** (supra) where relying upon the decision in **Joshi** (supra), the Apex Court took note of the settlement arrived at between the parties and

quashed the criminal proceedings for the offence punishable under Sections 420, 467, 468 and 471 r/w 120B of I.P.C. and held that since the criminal proceedings had the overtone of a civil dispute which have been amicably settled between the parties, it was a fit case where technicality should not be allowed to stand in the way of quashing of the criminal proceedings since the continuance of the same after the compromise arrived at between the parties would be a futile exercise. In **Manoj Sharma** (supra) also, the Supreme Court took the view that once the disputes are settled between the parties amicably, High Court cannot refuse to exercise the jurisdiction either u/s 482 or under Article 226 of the Constitution of India to quash the criminal proceedings even if the offence involved is non-compoundable. In **Gian Singh v. State of Punjab** (2010 (4) KLT 755), the two Judge Bench of the Apex Court doubted the correctness of the above three decisions and referred the question as regards the permissibility of indirectly permitting compounding of non-compoundable offences recouring to S.482 of Cr.P.C. to a Larger Bench of the Apex Court. Finally the issue was settled by a three Judge Bench of the Apex Court in **Gian Singh v. State of Punjab** [2012 (4) KLT 108 (SC)]. The Apex Court explaining that

the High Court has inherent power u/s 482 of Cr.P.C with no statutory limitation including S.320 of Cr.P.C. has held that these powers are to be exercised to secure the ends of justice or to prevent abuse of process of any Court and these powers can be exercised to quash criminal proceedings or complaint or FIR in appropriate cases where offender and victim have settled their dispute. However, it is also observed that the Court must have due regard to the nature and gravity of the crime and criminal proceedings in heinous and serious offences or offences like murder, rape and dacoity etc., should not be quashed despite victim or victim's family have settled the dispute with offender. The jurisdiction vested in High Court u/s 482 of Cr.P.C was held to be exercisable for quashing criminal proceedings in cases having overwhelming and predominantly civil flavour particularly offences arising from commercial, financial, mercantile, civil partnership or such like transaction, or even offences arising out of matrimony relating to dowry etc., family dispute or other such disputes where wrong is basically private or personal nature where parties mutually resolve their dispute amicably. It was also held that no category or cases for this purpose could be prescribed and each case has to be dealt with on its own merit.

Later, in ***Narinder Singh and Others v. State of Punjab and Others*** [(2014) 6 SCC 466] and also in ***State of Madhya Pradesh v. Laxmi Narayan and Others*** [(2019) 5 SCC 688], the Apex Court has summed up and laid down principles by which the High Court would be guided in adequate treatment to the settlement between the parties and exercise its power u/s 482 of Cr.P.C. while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with criminal proceedings. From the law enunciated in the above decisions, it is explicit and clear that the power of the High Court u/s 482 of Cr.P.C is not inhibited by the provisions of S.320 of Cr.P.C and FIR as well as criminal proceedings can be quashed by exercising inherent powers u/s 482 of Cr.P.C if it is warranted in the given facts and circumstances of the case or ends of justice or to prevent abuse of process of any Court, even in those cases which are non-compoundable where the parties have settled the matter between themselves.

8. The decisions in ***Gian Singh*** (supra), ***Narinder Singh*** (supra) and ***Laxmi Narayan*** (supra) do not deal with situation arising out of the prayer for quashing criminal proceedings after conviction for a non-compoundable offence. The ratio of those

decisions was in the context of settlement of dispute before conviction. The crucial question is whether analogy applied therein could be extended to cases after conviction of the accused.

9. The Division Bench of the Punjab and Haryana High Court in ***Sube Singh and Others v. State of Haryana and Others*** [(2014) 2 Crimes 299] had considered the question on a reference made to it as to whether criminal proceedings could be quashed by the High Court in exercise of power u/s 482 of Cr.P.C. even when the accused was found guilty and convicted by the trial Court. The question was answered by holding that the power u/s 482 of Cr.P.C was wide enough to quash proceedings in relation to non-compoundable offence notwithstanding the bar u/s 320 of Cr.P.C. and such power could be exercised at any stage of the proceedings. The Full Bench of the Bombay High Court in ***Abasaheb Yadav Honmane and Others v. The State of Maharashtra*** (2008 (2) Mh.L.J 856) has also held that power to compound can be exercised at the trial stage or even at the appellate stage subject to the satisfaction of the conditions postulated by the legislature u/s 320 of Cr.P.C. However, the Full Bench of the Bombay High Court (Nagpur Branch) recently in

Maya Sanjay Khandare and Another v. State of Maharashtra (APL No.709/2020 dt. 05/01/2021) has held that it is only in rarest of rare cases that High Court may, in exercise of its inherent powers u/s 482 of Cr.P.C. quash criminal proceedings relating to non-compoundable offence based on settlement between the parties after conviction. In **Renjith v. State of Kerala** (2019 KHC 5647), this Court took the view that even at the revisional stage, proceedings against the accused for committing a non-compoundable offence can be quashed invoking inherent power u/s 482 of Cr.P.C. In **Biju Eappen** (supra), this Court acquitted the accused after conviction accepting the compromise at the appellate stage. The Supreme Court in **Bitan Sen-Gupta and Another v. State of West Bengal and Another** (2018) 18 SCC 366] held that considering the wide amplitude of the powers u/s 482 of Cr.P.C, the same could be exercised for quashing the criminal proceedings post-conviction when the convict and the victim had arrived at a settlement.

10. It is settled that the plenary power possessed by the High Court u/s 482 of Cr.P.C. are very wide, though to be exercised sparingly and with circumspection. It is equally settled

that the said power could be exercised irrespective of the nature of the proceedings and concurrently with appellate or revisional jurisdiction. Criminal proceedings commence from the lodging of FIR and would continue till the order of conviction, if passed, attains finality. When the order of conviction by the trial Court is under challenge before the appellate or revisional Court, it cannot be said that the order of conviction did attain finality. The presumption of innocence would continue till the order of conviction attains finality despite the conviction by the trial Court. An appeal challenging the order of conviction has the effect of continuation of trial itself. Since the power u/s 482 of Cr.P.C. is not controlled by S.320, such power could be exercised at any stage of the criminal proceedings including at the appellate or revisional stage. The section does not contemplate or specify any particular stage when the powers u/s 482 could be invoked. S.320 also does not contemplate any stage or specific mode by which Court can permit compounding of the offences. Sub-sections (5) and (6) of S.320 permit composition of the offences even during appellate or revisional stage. Thus, there is no reason whatsoever to restrict exercise of powers u/s 482 of Cr.P.C. only to cases where an order of conviction was not passed. The

inherent power u/s 482 for quashing criminal proceedings being of a wide magnitude for being exercised with the object of securing the ends of justice, there cannot be limitation on such powers for being exercised only prior to conviction of an accused. Merely because the order of conviction was pending adjudication at the appellate or revisional stage, the same could not be a ground for refusing to exercise powers u/s 482 of Cr.P.C. to quash the criminal proceedings especially when the parties to the dispute had arrived at a settlement. Hence, I hold that if requirements of S.482 of Cr.P.C were satisfied in the sense that it was necessary to prevent abuse of the process of any Court or to secure the ends of justice, the criminal proceedings involving non-compoundable offence could be quashed notwithstanding the fact that the order of conviction was already passed against the accused provided offence in question does not fall in the category of offences prohibited for compounding in terms of the pronouncement of the Apex Court in **Gian Singh** (supra), **Narinder Singh** (supra) and **Laxmi Narayan** (supra).

11. Coming to the facts of the present case, even though offences alleged against the accused were under Sections 143, 147, 149, 326, 307 r/w 149 of I.P.C., the appellant was found

guilty only u/s 326 of the I.P.C. Paragraph 22 of the impugned judgment reads that accused was only 22 years old as on the date of the incident and no previous conviction has been proved against him. It is observed that he is the only bread winner of his family. In the affidavit sworn in by the victim, it is stated that the incident was the result of some misunderstanding due to political animosity and that the entire dispute has been settled. This Court gave a direction to SHO, Vadakkekara Police Station to enquire with the *defacto* complainant as to the genuineness of the affidavit and settlement and to file a report. Accordingly, the SHO has filed a report stating that the subject matter of the dispute has been amicably settled between the parties. The police has also recorded the statement of the victim which has also been produced. The offence for which the appellant was convicted does not involve offence of mental depravity or of heinous nature like rape, dacoity or murder. It does not fall in the category of offences termed to be prohibited in the pronouncements of Apex Court to be compounded exercising power u/s 482 of Cr.P.C. The dispute appears to be personal in nature and the victim is no more interested in carrying on with the criminal proceedings.

12. In ***Madan Mohan Abbot v. State of Punjab*** [(2008) 4 SCC 582], the Apex Court emphasised and observed that in the matter of compromise in criminal proceedings, keeping in view of the nature of the case, to save the time of the Court for utilizing to decide more effective and meaningful litigation, a commonsense approach, based on ground realities and bereft of the technicalities of law, should be applied. It was observed that in disputes where the question involved is of purely personal nature, Courts should ordinarily accept the terms of compromise. The three Judge Bench of the Apex Court in ***Social Action Forum for Manav Adhikar and Another v. Union of India, Ministry of Law and Justice and Others*** [(2018) 10 SCC 443] has held that if a settlement is arrived at, the parties can approach the High Court u/s 482 of Cr.P.C and the High Court, keeping in view the law laid down in ***Gian Singh*** (supra) shall dispose of the same.

13. Keeping in view of the nature and gravity of the offence, ratio laid down by the Apex Court and considering the facts and circumstances of the case in its entirety, I am of the view that Crl.M.A.No.1/2021 deserves to be allowed in view of the compromise arrived at between the parties for the ends of

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justice.

In the result, Crl.M.A.No.1/2021 is allowed. The entire proceedings initiated in terms of Crime No. 179/2003 of Vadakkekara Police Station is quashed. The conviction and sentence of the appellant vide the impugned judgment are set aside. The Crl.Appeal stands disposed of in the aforesaid terms.

Sd/-

DR. KAUSER EDAPPAGATH

Rp

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JUDGE

PS to Judge