

A.F.R.

Reserved

Court No. - 23

Case :- APPLICATION U/S 482 No. - 24 of 2023

Applicant :- Sanni @ Nitish @ Nitish Agrahari And 2 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Raghvendra Singh, Anil Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Raghvendra Singh, learned counsel for the applicants, Sri Tilak Raj Singh, learned AGA-I on behalf of the State and Sri Ramendra Kumar, learned counsel for the opposite parties no. 2 to 4.

2. By means of the instant application the applicants are seeking quashing of the charge sheet dated 26.03.2015 filed in respect of Case Crime No. 511/2014, under Sections 307, 323 IPC, Police Station Kotwali Akbarpur, District Ambedkar Nagar and proceedings of Session Trial No. 111/2015 titled State v. Sunni @ Nitish & Ors. pending in the Court of IIIrd Additional District and Session Judge, Ambedkar Nagar arising out of the aforesaid charge sheet on the ground that on 09.12.2022 a compromise has been entered into between the parties settling the dispute and now the opposite parties no. 2 to 4 do not want to pursue the matter.

3. The aforesaid case was initiated on the basis of an FIR bearing Case Crime No. 511/2014 lodged on 19.12.2014 by the opposite party no. 2 Ram Prasad against the petitioners stating that the petitioner no. 2 Narendra Kumar was raising construction of a wall on a land in dispute. The informant asked him not to raise any construction till the decision of the court whereupon the petitioner no. 1, who is son of petitioner no. 2, started beating the informant. When the informant's sons came to intervene, the petitioner no. 2 Narendra shot at the informant's son Sanjeev and another accused person shot at Umesh, another son of the informant. The petitioner no. 1 Sanni assaulted the

informant with a rod causing injury in his head. The informant's youngest son Santosh was also shot at but he was not hurt.

4. After investigation, the police submitted a charge sheet against the petitioner no. 1 Sunni under Sections 323 and 307 IPC and against the petitioner no. 2 Narendra for offences under Section 30 of the Arms Act and on 08.11.2015, the learned court passed an order summoning the petitioner nos. 1 & 2 for being tried for the aforesaid offences.

5. The injury form of Sanjeev Kumar mentions a firearm entry wound on the right side of his chest and exit wound on the shoulder, however, his X-ray examination did not reveal any bonny injury.

6. The injury form of Umesh Kumar also mentions a firearm injury on the right side of his chest and his X-ray examination too did not reveal any bonny injury.

7. In his statement recorded under Section 161 Cr.P.C., the informant had stated that the petitioner no. 2 had fired at his son Sunni and the petitioner no. 3 Sushil had fired a shot at his second son Umesh. Sunni had assaulted the informant with the iron rod causing injury on his head and a shot was fired towards his youngest son Santosh also he he was not hurt.

8. The injured Sanjeev also stated that the petitioner no. 2 Narendra had fired a shot at him. The other injured Umesh Kumar stated that the petitioner no. 2 had fired a shot at Sanjeev and the petitioner no. 3 Sushil, son of Jamuna had fired a shot which hit him.

9. As per the averments made in support of the application, the parties have entered into a compromise. A copy of the compromise has been annexed with the affidavit, which does not bear any date. It has been mentioned in the compromise that the accused persons and the injured persons have entered into a compromise and the injured persons have pardoned the accused persons and they do not want any proceedings to continue against the accused persons.

10. In **Gian Singh v. State of Punjab**, (2012) 10 SCC 303, the Hon'ble Supreme Court summarized the legal position regarding

power of the High Court in quashing criminal proceedings on the basis of a compromise, in the following words: -

*61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. **In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime.** Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer*

to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

(Emphasis supplied)

11. In **Narinder Singh and Others Vs. State of Punjab and Another**, (2014) 6 SCC 466, the Hon'ble Supreme Court has been pleased to sum up and lay down the principles by which the High Court would be guided in giving adequate treatment to the settlement between parties and exercising its power under Section 482 Cr.P.C. while accepting the settlement and quashing the proceedings or refusing to accept the settlement in the following words:-

“29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2 When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3 Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4 On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On

the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

(Emphasis supplied)

12. In **Gold Quest International (P) Ltd. v. State of T.N.**, (2014) 15 SCC 235, the Hon'ble Supreme Court held that: -

*“8. In view of the principle laid down by this Court in the aforesaid cases, we are of the view that in **the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 CrPC read with Article 226 of the Constitution. However, the same would not apply where the nature of offence is very serious like rape, murder, robbery, dacoity, cases under the Prevention of Corruption Act, cases under the Narcotic Drugs and Psychotropic Substances Act and other similar kind of offences in which punishment of life imprisonment or death can be awarded.**”*

(Emphasis supplied)

13. The aforesaid decision in **Narinder Singh** (supra) has been followed by the Hon'ble Supreme Court in **State of Madhya Pradesh vs. Laxmi Narayan & Others** (2019) 5 SCC 688 and in that case the Hon'ble Supreme Court has held that:-

“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 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/delegate 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 paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;"

(Emphasis supplied)

14. In **Arun Singh v. State of Uttar Pradesh Through its Secretary & Ors.** (2020) 3 SCC 736, the Hon'ble Supreme Court has held:—

“14. In another decision in Narinder Singh v. State of Punjab (2014) 6 SCC 466 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.

15. Bearing in mind the above principles which have been laid down, we are of the view that offences for which the appellants have been charged are in fact offences against society and not private in nature. Such offences have serious impact upon society and continuance of trial of such cases is founded on the overriding effect of public interests in punishing persons for such serious offences. It is neither an offence arising out of commercial, financial, mercantile, partnership or such similar transactions or has any element of civil dispute thus it stands on a distinct footing. In such cases, settlement even if arrived at between the complainant and the accused, the same cannot constitute a valid ground to quash the FIR or the charge-sheet.

16. Thus the High Court cannot be said to be unjustified in refusing to quash the charge-sheet on the ground of compromise between the parties.”

(Emphasis supplied)

15. In **Daxaben v. The State of Gujarat & Ors.** 2022 SCC OnLine SC 936 the Hon'ble Supreme Court has held as under:-

“50. In our considered opinion, the Criminal Proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr. P.C. only because there is a settlement, in this case a monetary settlement, between the accused and the complainant and other relatives of the deceased to the exclusion of the hapless widow of the deceased. As held by the three-Judge Bench of this Court in Laxmi Narayan (supra), Section 307 of the IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. On a parity of

reasoning, offence under section 306 of the IPC would fall in the same category. An FIR under Section 306 of the IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. It is clarified that it was not necessary for this Court to examine the question whether the FIR in this case discloses any offence under Section 306 of the IPC, since the High Court, in exercise of its power under Section 482 CrPC, quashed the proceedings on the sole ground that the disputes between the accused and the informant had been compromised.”

16. From a perusal of the aforesaid decisions of the Hon'ble Supreme Court, the principles governing quashing of criminal proceedings on the basis of compromise are that there is no thumb rule in this regard and each case has to be decided on the facts and circumstances of its case. Before exercising such power, the High Court must have due regard to the nature and gravity of the crime and the power to quash is to be exercised sparingly and with caution. Such a power is not to be exercised in cases involving heinous and serious offences, which include offence under Section 307 IPC.

17. In the present case, the FIR allegations are that a land dispute is existing between the parties regarding which a case was pending. In spite of pendency of the civil dispute, the accused persons started raising a wall at about 10 a.m. and upon being objected by the informant and his sons, the petitioner no. 2 fired a shot which hit the informant's sons Sanjeev on his chest and the petitioner no. 3 fired another shot which hit Umesh, another son of the informant, on his chest. The medico-legal examination report of Sanjeev and Umesh are available on record, which support the FIR allegations. The statements of the informant and his injured sons Sanjeev and Umesh also support the FIR allegations. The police had submitted a charge sheet against the petitioners no. 1 & 2 and thereafter the name of the petitioner no. 3 has been added on 25.10.2021 on an application filed under Section 319 Cr.P.C.

18. Since there was an old property dispute between the parties, the accused persons were known to the informant and his sons. The

incident took place in broad day light and there is no reason to doubt the identity of the persons who caused the incident.

19. The accused persons have sought quashing of the charge-sheet and the proceedings merely on the ground that on 09.12.2022 the parties have entered into a compromise stating that the informant and the injured persons have pardoned the accused persons and they do not want any further proceedings in the matter and the accused persons may get the proceedings terminated in terms of the compromise. The acts allegedly committed by the petitioners involve firing gun shots in broad day light hitting two persons in their chests and such offence is a very serious offence and the material on record, namely, the medico legal examination report of the injured persons and the statements recorded during investigation, fully support the FIR allegations. The offence alleged has to be treated as a crime against the society and not against the injured sons of the informant alone and, therefore, this Court is of the view that the informant and his sons have no authority to pardon the accused persons.

20. Keeping in view the aforesaid discussion, this Court is of the considered view that the proceedings of the case against the petitioners cannot be quashed on the basis of a compromise entered into between the parties. The application under Section 482 Cr.P.C. praying quashing of the charge sheet and the entire proceedings initiated on the basis thereof, on the sole ground that the parties have entered into a compromise, lacks merits and, accordingly, the same is *dismissed*.

Order Date :- 17.01.2023

Pradeep/-