



**THE HIGH COURT OF SIKKIM AT GANGTOK**  
(Criminal Jurisdiction)

**J U D G M E N T**

**CRL. M.C. No. 10 of 2014**

1. Dr. Prabhat Kiran Rai,  
S/o Shri Rasta Man Rai,  
Aged 35 years.  
R/o Chumbung, West Sikkim,  
Under P.O. and P.S. Naya Bazar,  
At present at Tashiding,  
West Sikkim.
2. Dr. Srijana Subba,  
Wife of Shri Sagar Subba,  
Aged 27 years,  
Resident of Kyongsa Busty,  
Gyalshing,  
P.O. & P.S. Gyalshing,  
West Sikkim.

**...Petitioners**

Versus

The State of Sikkim,  
Through, Ld. Public Prosecutor,  
High Court of Sikkim.

**...Respondent**

**CORAM**

**HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE N. K. JAIN**

**Date of Judgment : 17.09.2014**

For Petitioners : Mr. Dewan Sharma Luitel,  
Advocate for the Petitioners.

Dr. Prabhat Kiran Rai, Petitioner  
No. 1 and Dr. Srijana Subba,  
Petitioner No. 2, in person.

For State-Respondent : M/s. S.K. Chettri and Pollin Rai,  
Asstt. Public Prosecutors.

**Jain, CJ (Oral).**

Heard learned counsel for the parties.

2. The petitioner No. 1, Dr. Prabhat Kiran Rai, Son of Shri Rasta Man Rai and petitioner No. 2, Dr. Srijana Subba, Wife of Shri Sagar Subba, have preferred this joint petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'the Cr. P.C.') for quashing the further proceedings of G.R. Case No. 31 of 2014 pending before the Judicial Magistrate, West Sikkim at Gyalshing, arising out of FIR No. 07/2014 dated 19.02.2014 registered at P.S. Gyalshing (West) under Sections 354A (i)/448 IPC, on the ground that petitioner No. 1/accused and petitioner No. 2/victim, have



settled their dispute and have executed a written Compromise Deed in the matter.

**3.** From the submissions of learned counsel for the parties and the facts mentioned in the petition, it appears that petitioner No. 2, Dr. Srijana Subba lodged an FIR No. 07/2014 on 19.02.2014 in respect of occurrence took place in the intervening night of 18 and 19 of February, 2014 at Police Station Gyalshing, Dist. West, which was registered under Section 354A (i)/448 IPC. After completion of investigation, the police submitted a charge-sheet against the petitioner No. 1, Dr. Prabhat Kiran Rai in the Court of Chief Judicial Magistrate, South & West at Namchi on 06.06.2014. Learned Chief Judicial Magistrate took cognizance of an offence under Section 354A(i) IPC against petitioner No. 1/ accused, Dr. Prabhat Kiran Rai and forwarded the case for trial to the Court of Judicial Magistrate, West, at Gyalshing.

**4.** During the pendency of trial of the case, the parties have entered into a compromise. The complainant/ petitioner No. 2, Dr. Srijana Subba also filed an affidavit dated 09.09.2014, stating therein that she does not want to

prosecute the criminal case arising out of FIR No. 07/2014 against Dr. Prabhat Kiran Rai. The original copy of Settlement/Compromise Deed dated 11.03.2014 has also been placed on record along with this petition. The contents of Compromise Deed are reproduced as under: -

**"SETTLEMENT/COMPROMISE DEED"**

This amicable settlement deed is made on 11<sup>th</sup> Day of March, 2014 **BETWEEN** Dr. Prabhat Kiran Rai, Medical Officer in-charge, Tashiding PHC, S/o Shri Rastaman Rai, R/o Baiguney, West Sikkim herein after referred to as **FIRST PARTY**.

**AND**

Dr. Srijana Subba, Medical Officer, District Hospital, Geyzing w/o Mr. Sagar Subba, r/o Geyzing West Sikkim herein after referred to as **SECOND PARTY**.

That this amicable Settlement/Compromise deed are as follows: -

1. That due to the incidents happened on 19<sup>th</sup> Day of February, 2014 first at Pokhri and second at middle Chongrang, West Sikkim on the same day certain misunderstandings occurred between the **FIRST PARTY** and the **SECOND PARTY**.
2. That due to the said incident, both the parties had lodged an FIR at concerned Police Station, West Sikkim on the same date.
3. That in connection to the said FIR, a case under Section 354A and 448 of Indian Penal Code was registered by the **SECOND PARTY** against the **FIRST PARTY** and the Charge sheet is yet to be filed before the Hon'ble Court by the Investigating Officer.



4. That the FIR lodged by the FIRST PARTY against the SECOND PARTY is yet to be taken into action by the concerned Police Officer.
5. That both the parties have voluntarily admitted that the FIR against each other was lodged due to mental pressure created through the said incident.

Now, this Settlement/Compromise Deed further stand as follows: -

6. That both the parties have now decided to make an amicable settlement and has further decided not go for any sort of legal and Departmental procedure under the following conditions: -
  - a. That both the parties have mutually agreed to withdraw their respective FIRs/Cases against each other.
  - b. That both the parties have mutually agreed to recover the damages caused to the vehicle involved during the said incident.
  - c. That both the parties have realized their mistakes and have offered their sincere apology towards each other.
  - d. That both the parties have mutually agreed to keep a healthy and a respectful relationship without any sort of hard feelings against each other in future.
  - e. That both the parties have mutually decided not to defend each other through any source of media or social networking site.
  - f. That both the parties have mutually decided not to re-iterate the matter to anybody in future once the agreement has been signed.

Therefore, it is further submitted that the contents of para 1 to 5 and 6(a) to 6(f) are true to our knowledge and beliefs. Hence, we do hereby sign this amicable settlement/ compromise deed on this 11<sup>th</sup> Day of March, 2014 at Geyzing, West Sikkim in presence of the following witnesses:-

**WITNESSES**

1. Sd/-  
11.03.14  
Pema Lama

Sd/-  
Dr. Prabhat Kiran Rai  
(First Party)

Sd/-  
Mrs. Reeta Tamang  
(W/o Mr. Prabhat Kiran Rai)  
(First Party)

2. Sd/  
(Illegible)

Sd/-  
Dr. Srijana Subba  
(Second Party)

Sd/-  
Mr. Sagar Subba  
(Husband of Dr. Srijana Subba)  
(Second Party)"

5. It appears from the Compromise Deed that cross cases were lodged by accused and complainant against each other. Now, both the parties have settled their disputes and they have filed present joint petition before this Court for quashment of criminal proceedings pending in the trial Court.

6. Both the parties are present in person. They have admitted the contents of the Compromise Deed.


7. Learned counsel for petitioners submitted that accused and complainant both are Doctors by profession, they have realized their mistakes. They have entered into a compromise. The petitioner No. 2/complainant has also filed



an affidavit that she does not want to press her case against petitioner No.1/accused, therefore, criminal proceedings pending against petitioner No.1/ accused be quashed and set aside. In support of his submissions, he referred judgment of this Court dated 12.12.2013 in **Crl. M.C. No. 21 of 2013, Mr. Tara Rai vs. State of Sikkim & Anr.**, wherein this Court quashed the proceedings in respect of non-compoundable offence under Sections 324 IPC on the basis of judgment of Hon'ble Apex Court delivered in the case of **Gian Singh vs. State of Punjab and Anr. : (2012) 10 SCC 303.**

8. Learned counsel for petitioners also referred a latest judgment of Hon'ble Apex Court dated 27.03.2014 passed in **Crl. Appeal No. 686/2014 arising out of SLP (Criminal) No. 9547/2013 : Narinder Singh & Ors. vs. State of Punjab & Anr.**, wherein the Hon'ble Apex Court quashed the proceedings pending in the trial Court in respect of offence under Section 307 IPC, which is not compoundable, on the basis of compromise.

9. Learned Assistant Public Prosecutor submitted that since parties have settled their disputes and they have placed



on record a copy of Compromise Deed, therefore, he has no objection, in case the proceedings pending in the trial Court against petitioner No.1 are quashed.

**10.** I have considered the submissions of the learned counsel for the parties. Petitioner No.1/accused and Petitioner No. 2/complainant, both are Doctors by profession. They had gone together to attend one medical camp. Some incident took place there with them. They lodged FIR against each other. The FIR against petitioner No. 1, Dr. Prabhat Kiran Rai was registered under Section 354A (i)/448 IPC, which is not compoundable. Although the police has filed charge-sheet and learned trial Court has taken cognizance of the offence. However, I find that parties have settled their disputes and they have entered into compromise. The written Compromise Deed has also been placed on record. The complainant, petitioner No. 2, Dr. Srijana Subba, has also filed her affidavit to the effect that she does not want to prosecute her criminal case lodged against petitioner No. 1, Dr. Prabhat Kiran Rai. The offence appears to be private in nature. In these circumstances, there is no chance of



conviction of the accused, therefore, no useful purpose will be served in keeping the matter pending anymore.

11. This Court in **Tara Rai's** case (supra) considered and relied upon paragraph 61 of judgment of Hon'ble Apex Court in **Gian Singh's** case (supra) and quashed the criminal proceedings pending against the accused on the basis of compromise by observing that there is no possibility of conviction of accused in view of compromise between parties. Paragraphs 13 to 19 of the Judgment of **Tara Rai** (supra), are reproduced as under: -

"13. The larger Bench consisting of three-Judge of Hon'ble Apex Court in **Gian Singh's** case (supra), considered a reference, referred by a two-Judge Bench, to see the correctness of the decisions of Hon'ble Apex Court in **B.S. Joshi vs. State of Haryana : (2003) 4 SCC 675, Nikhil Merchant vs. CBI : (2008) 9 SCC 677** and **Manoj Sharma vs. State : (2008) 16 SCC 1**, wherein the Hon'ble Apex Court had permitted compounding of non-compoundable offences relating to matrimonial and civil disputes. Hon'ble Apex Court in **Gian Singh's** case (supra) considered its various judgments and also the judgment of five-Judge Bench of Punjab & Haryana in **Kulwinder Singh vs. State of Punjab** reported in **(2007) 4 CTC 769** and a judgment of three-Judge Bench of the Bombay High Court in **Abasahib Yadav Honmane vs. State of Maharashtra** reported in **(2008) 2 MAH LJ 856**. Hon'ble Apex Court considered the powers of High Court under Section 482 of the Cr. P.C. and also provision of Section 320 Cr. P.C.



14. The Hon'ble Apex Court in ***Gian Singh's case*** (supra) answered the reference and held that it cannot be said that ***B.S. Joshi, Nikhil Merchant and Manoj Sharma cases*** (supra) were not correctly decided. The Hon'ble Apex Court held that 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. 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 in the case.

15. It has further been held by Hon'ble Apex Court that 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. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes 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. Paragraph 61 of the ***Gian Singh's*** judgment is reproduced as under: -

"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 plentitude 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)

**16.** From the above, it is clear that Hon'ble Apex Court is specifically barred the compounding of the non-compounding offences in respect of heinous and serious offences mentioned in paragraph 61 of the judgment but allowed the High Court to quash the criminal proceedings, if in its view, on the basis of compromise of non-compoundable offences, where the offences arise 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.

**17.** So far as the present case is concerned, the offence under Section 324 IPC is non-compoundable. Although, an injury has been inflicted by a sharp edged weapon, but the nature of injury was simple in nature. The prosecution agency itself



has filed Challan under Section 324 IPC and cognizance of offence has also been taken under Section 324 IPC. The accused-petitioner as well as the victim, both are real brothers residing in one house. Both are present along with their mother. Respondent No. 2, victim has filed a compromise by way of an affidavit in the Court. The victim is the elder brother, who, as per his statement, is jobless, whereas the accused-petitioner is the younger brother of the victim and at present he is a casual employee in the Government and he is looking after his elder brother, respondent No. 2 as well as their mother. From the nature of allegations in the Challan, the present case does not appear to be an offence related to public at large but it appears to be a private in nature. The incident took place in the room of the petitioner, where petitioner and the respondent No. 2, both were drinking alcohol sitting together. The incident took place all of sudden when they were chatting with each other.

**18.** In these circumstances, I am of the view that in case, the proceedings are not quashed in this case, it would tantamount to abuse of process of Court and quashment of proceeding will be in the interest of justice and to secure the ends of justice. Both the brothers are living in one house with their mother, therefore, both will live peacefully in their house. The possibility of conviction is also remote and bleak. The continuation of the criminal proceeding would put the accused to great oppressions 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.

**19.** In view of above, I find this case to be fit one to quash the criminal proceedings against the accused-petitioner in the present case. Consequently, the petition under Section 482 Cr. P.C. is allowed. The entire proceedings of G.R. Case No. 17/2013, pending in the Court of Chief Judicial Magistrate, East and North Sikkim at Gangtok arising out of Challan filed against the petitioner under Section 324 IPC are quashed and set aside."

12. The Hon'ble Apex Court in **Narinder Singh's** case (supra) quashed the criminal proceedings, arising out of FIR registered under Section 307 IPC, on the basis of compromise. Paragraph 34, 35 and 36 of the said judgment are also reproduced as under: -

"34. We find the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compel us to take a different view.

35. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to



drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2012 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly.

(emphasis supplied)

36. Appeal is allowed, No costs."

**13.** Since both the parties have entered into a compromise, they are present in person in Court, they have admitted the contents of the Compromise Deed, the complainant has filed an affidavit that she does not want to prosecute the case, anymore against petitioner No. 1, Dr. Prabhat Kiran Rai.

**14.** In these circumstances, I am of the view that although an offence under Section 354A IPC is non-compoundable, but in view of compromise entered into between the parties, there is no possibility of conviction of the accused/petitioner No. 1. The continuation of criminal proceedings would put the accused to get oppressions 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.



**15.** In these circumstances, I am of the view that in case, the proceedings are not quashed in this case, it would tantamount to abuse of process of Court and quashment of proceedings will be in the interest of justice and to secure the ends of justice.

**16.** In view of above, Crl. Misc. Petition is allowed. The further proceedings of G.R. Case No. 31/2014 pending in the Court of Judicial Magistrate, West Sikkim at Gyalshing arising out of FIR No. 07/2014 dated 19.02.2014 registered at Police Station Gyalshing, West Sikkim, are quashed and set aside.

**17.** A copy of this order be sent for information and compliance to the Court of Judicial Magistrate, West Sikkim at Gyalshing.

**(N.K. Jain)**  
**Chief Justice**  
17.09.2014

Approved for reporting: Yes / ~~No~~  
Internet : Yes / ~~No~~

pm/jk