

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr.R. No. 36 of 2016.

Decided on: 31.08.2016.

Balbir ModkaPetitioner.

Versus

Himachal Gramin Bank ... Respondent.
Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ No.

For the petitioner. : Mr. Hamender Singh Chandel,
Advocate.

For the respondent. : Ms. Devyani Sharma, Advocate.

Ajay Mohan Goel, Judge (oral)

The present petition has been filed against the judgment passed by the learned Additional Sessions Judge-II, Shimla, dated 03.11.2015, in Cr. Appeal No. 32-S/10 of 2015 whereby the appeal filed by the petitioner against the judgment, conviction and sentence passed by the learned Additional Chief Judicial Magistrate, Court No. 2, Shimla, dated 08.04.2015/ 20.04.2015, in Case RBT No. 1370/3 of 2014/13 under Section 138 of the Negotiable Instruments Act, vide which petitioner was convicted and sentenced to

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

undergo simple imprisonment for a period of one year and to pay compensation of ` 1,00,000/- has been dismissed and the judgment passed by the learned Additional Chief Judicial Magistrate, Court No. 2, Shimla has been upheld.

2. It is not necessary to narrate the facts giving rise to filing of the present revision because it has been jointly represented by learned counsel for both the parties that they have amicably settled the matter. Ms. Devyani Sharma, learned counsel appearing for the respondent, on instructions from Mr. Sagar Srivastva, General Manager, Himachal Pradesh Gramin Bank, Khalini branch, submits that in view of the said amicable settlement, the complainant-respondent Bank does not want to pursue the case any further.

3. From the records of the case, this Court finds that this is not a case wherein offence for which the petitioner has been charged can strictly be termed to be an offence against the State. On the other hand, continuation of criminal case against the petitioner would put the petitioner to great oppression and prejudice and extreme injustice would be caused to him in case the impugned judgment of conviction and sentence are not set aside.

4. This court is not powerless in such situation and adequate powers have been conferred upon it not only under sections 397 read with Section 401 or Section 482 Cr.P.C. (hereinafter referred to as the Code) but also under Section 147 of the Act for accepting the settlement entered into between the parties and to quash the proceedings arising out of the proceedings, which have consequently culminated into a settlement. This power has been conferred to subserve the ends of justice or/and to prevent abuse of the process of any Court. Though, such power is required to be exercised with circumspection and in cases which do not involve heinous and serious offence of mental depravity or offences like murder, rape, dacoity etc. The law on this subject has been summed up in a recent judgment of the Hon'ble Supreme Court in **Narinder Singh & Ors. V. State of Punjab & Anr.**

JT 2014 (4) SC 573, wherein it was held as under:-

“(I) 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.

(II) 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.

(III) 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 of 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.

(IV) 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.

(V) 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.

(VI) 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.*

*(VII) 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.”*

- 5.** As already observed herein, the parties have already reached an amicable settlement and at best it was the

complainant/respondent who could be said to be affected and aggrieved party, but herein even the affected and aggrieved party i.e. complainant/respondent is not interested to pursue the complaint and does not want to hold the petitioner responsible for the offence under the Act. Therefore, quashing of the complaint initiated at the instance of the respondent/complainant would be a step towards securing the ends of justice and to prevent abuse of process of the Court.

6. Keeping in mind the aforesaid exposition of law, it is clear that the facts of this case do not in any manner fall within the exception culled out by the Hon'ble Supreme Court in **Narinder Singh's** case (supra).

7. Thus, taking holistic view of the matter and further taking into consideration all the attending facts and circumstances as also the law laid down by the Hon'ble Supreme Court in **Narinder Singh's** case (supra), I find this to be a fit case to exercise the powers not only under Sections 397, 401 and Section 482 of the Code, but even under Section 147 of the Act.

8. Accordingly, judgment dated 03.11.2015 passed by learned Additional Sessions Judge-(II), Shimla, in Criminal Appeal No. 32-S/10 of 2015, whereby he affirmed the

judgment of conviction and order of sentence dated 08.04.2015/20.04.2015 passed by learned Additional Chief Judicial Magistrate, Court No. 2, Shimla, in criminal Case RBT No. 1370/3 of 2014/13 in a complaint filed by the complainant/respondent against the petitioner under Section 138 of the Act wherein the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year and to pay compensation of ` 1,00,000/-, are set aside.

Consequently, the petitioner is acquitted of the offence under Section 138 of the Act.

9. The learned Trial Court is directed to release the amount deposited with it by the petitioner in favour of the petitioner within four weeks from the date of production of copy of the judgment in accordance with law.

Accordingly, the revision petition is disposed of in the aforesaid terms, so also the pending application(s), if any.

**(Ajay Mohan Goel)
Judge**

31st August, 2016.
(narender)