



HIGH COURT OF SIKKIM  
Record of Proceedings

**Crl. M.C. No. 8 of 2018**

SINGHA BAHADUR TAMANG AND ANOTHER

PETITIONER(S)

VERSUS

STATE OF SIKKIM

RESPONDENT

**Date: 14.09.2018**

CORAM:

**THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, A.C.J.**

For Petitioner(s) : Mr. Tempo Gyatso Bhutia, Advocate.

For Respondent : Mr. Karma Thinlay, Addl. Public  
Prosecutor with Mr. Thinlay Dorjee, Addl.  
Public Prosecutor, Mr. S.K. Chettri and  
Mrs. Pollin Rai, Asst. Public Prosecutors.

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**ORDER**

**1.** The Petitioners No.1 and 2 are before this Court seeking the following reliefs;

(i) Quashing of the proceedings in Criminal Appeal No. 18 of 2017 (*Singha Bahadur Tamang vs. State of Sikkim*) pending before the Court of the learned Sessions Judge, Special Division-I, Sikkim at Gangtok.

(ii) Quashing of the impugned Judgment and Order on Sentence dated 13.12.2017, in G.R. Case No. 317 of 2015 of the learned Judicial Magistrate, Soreng Sub-Division (camp at Gangtok).



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(iii) Quashing of the FIR lodged before the Sadar Police Station bearing No. 88/2015 dated 01.04.2015, under Section 324 of the Indian Penal Code, 1860.

**2.** The aforesaid matter arose out of an FIR lodged before the Sadar Police Station by the Petitioner No.2, Raju Chettri, on 01.04.2015, informing therein that he was assaulted with a rod by the Petitioner No.1. On the basis of the said FIR, Sadar Police Case No. 88/2015 dated 01.04.2015, under Section 324 of the Indian Penal Code, 1860, was registered against the Petitioner No.1, Singha Tamang, and the case endorsed to the Investigating Officer for investigation. On completion of investigation, charge-sheet was submitted against the Petitioner No.1 and the learned Magistrate framed charge under Section 324 of the Indian Penal Code, 1860 against him. The trial commenced on the plea of 'not guilty' by the Petitioner No.1, culminating in the impugned Judgment of conviction of the learned Judicial Magistrate in G.R. Case No. 317 of 2015 dated 13.12.2017. Aggrieved, the Petitioner No.1 was before the Court of the learned Sessions Judge, East Sikkim at Gangtok in Appeal. The matter came to be transferred to the Court of the learned Sessions Judge, Special Division-I, Sikkim at Gangtok on 28.05.2018, vide Orders of the learned Sessions Judge of the same date, pursuant to the direction of this High Court vide letter dated 25.05.2018. The matter was heard and listed thereafter for judgment. However, on the date so fixed, the Petitioner No.1 filed an Application seeking



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deferment of the date of the judgment as the parties, i.e., the Petitioners No.1 and 2, had amicably settled the matter by duly executing a Compromise Deed.

**3.** That, the Judgment is pending pronouncement in the said matter and prior to such pronouncement, this Petition is being filed in view of the compromise entered between the parties on 18.07.2018 with the intervention of family members and friends. The offence being non-compoundable, the jurisdiction of this Court is being invoked. That, in view of the said settlement, proceedings be quashed and the Compromise Deed be accepted.

**4.** Learned Additional Public Prosecutor in the circumstances has no objection to the prayers.

**5.** Considered submissions of learned Counsel for the Petitioners and the State-Respondent and perused the documents on record.

**6.** It is pertinent to reiterate that the offence under Section 324 of the Indian Penal Code, 1860, is non-compoundable. Although, the matter is at the appellate stage, Section 482 of the Code of Criminal Procedure, 1973, clothes this Court with extraordinary powers, which has to be exercised with circumspection and cautiously



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for the purposes of meting out substantial justice. The powers cannot be used in an unbridled manner.

7. The Hon'ble Supreme Court in ***Narendra Singh and Ors. vs. State of Punjab and Ors. : (2014) 6 SCC 466***, while dealing with a matter similarly circumstanced, viz. in appeal, in which the First Information Report was registered under Section 307/324/323/34 of the Indian Penal Code, 1860, would observe as follows;

"33. 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 14.7.2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly."



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**8.** In *Gian Singh vs. State of Punjab & Anr.:* (2012) 10 SCC 30,  
the Hon'ble Supreme Court would hold as under: -

**"57.** Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the end of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

**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 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. ...."

**9.** It is worth noticing that as the parties have amicably settled the matter, likelihood of conviction would therefore be remote as the prospects of the witnesses appearing and deposing in support of the prosecution case would be distant. Accordingly, considering the settlement between the parties and in the interest of justice, the Deed of Compromise between the parties is accepted.



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**10.** Consequently;

(i) proceedings in Criminal Appeal No. 18 of 2018, pending before the Court of the learned Sessions Judge, Special Division-I, Sikkim at Gangtok, is quashed.

(ii) the impugned Judgment and Order on Sentence dated 13.12.2017, passed in G.R. Case No. 317 of 2015 by the learned Judicial Magistrate, Soreng Sub-Division (camp at Gangtok) stands quashed.

(iii) the FIR lodged before the Sadar Police Station bearing No. 88/2015 dated 01.04.2015, also stands quashed.

**11.** Accordingly, Crl. M.C. No. 8 of 2018 is disposed of.

**12.** Copy of this Order be sent to the Court of the learned Sessions Judge, Special Division-I, Sikkim at Gangtok and the Court of the learned Judicial Magistrate, Chungthang Sub-Division (camp at Gangtok) for information.

**Acting Chief Justice**  
**14.09.2018**

Index : Yes / No  
Internet : Yes / ~~No~~

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