THE HIGH COURT OF SIKKIM: GANGTOK

(Criminal Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. M.C. No. 07 of 2021

1. Mr. Rinchen Tamang,
S/o Shri M. B. Tamang,
R/o Majitar, Rangpo,
East Sikkim.

2. Mr. Naseeb Tamang,
S/o Shri M.S. Tamang,
R/o Nimtar, 32 No.,
East Sikkim.

3. Mr. Sandeep Biswakarma,
S/o Shri Man Bahadur Biswakarma,
R/o Tadong, East Sikkim.

4. Mr. Sandesh Rai,
S/o J. B. Rai,
R/o Lall Bazar, Gangtok,
East Sikkim.

5. Mr. Sushil Tamang,
S/o Shri Dawa Tamang,
R/o Lingding,
East Sikkim.

6. Mr. Ram Tamang,
S/o Shri Tempa Tamang,
R/o Lall Bazaar, Gangtok,
East Sikkim.

7. Mr. Bhupen Rai,
S/o Shri Man Bahadur Rai,
R/o Lumsey, East Sikkim.

8. Mr. Karma Tashi Bhutia,
S/o Late Tshering Pintso Bhutia,
R/o Lingding, East Sikkim.

9. Mr. Sonam Dorjee Bhutia,
S/o Shri Thamtu Bhutia,
R/o Upper Syari, Gangtok,
East Sikkim.

10. Mr. Sangay Yusur Bhutia,
S/o Late Tshering Topgay Bhutia,
R/o Dicheling, East Sikkim.

11. Mr. Karma Mingyur Bhutia,
S/o Late Tshering Topgay Bhutia,
R/o Dicheling, East Sikkim.

12. Mr. Jigmee Tseten Bhutia,
S/o Shri Tashi Chopel Bhutia,
R/o Dicheling, East Sikkim. ..... **Petitioners**

Versus

State of Sikkim .... **Respondent**

Application under section 482 of the Code of Criminal Procedure, 1973.

Appearance:

Ms. Rachhitta Rai, Advocate for the Petitioners.

Mr. Yadev Sharma, Additional Public Prosecutor and Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-Respondent.

Date of hearing : 17.02.2022 & 21.02.2022
Date of Order : 23.02.2022

O R D E R

Bhaskar Raj Pradhan, J.

1. This petition under section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed by 12 petitioners seeking the annulment of First Information Report (FIR) No. 237/2018 dated 09.12.2018 registered under section 341, 147, 149, 324, 326 of the Indian Penal Code, 1860 (IPC) against the petitioner nos. 2, 4, 5 and other unknown accused persons on a complaint by petitioner nos. 8 to 12 (jointly referred to for convenience as the complainants). It was alleged that on 09.12.2018 at

around 2 A.M. in the morning while returning home from "After Dark" located at hospital dara Gangtok they were brutally attacked by more than 10 people with stones and bottles at zero point Gangtok due to which they suffered bruises all over the face and body and stitches in the head. The FIR led to the filing of the charge-sheet against the petitioner nos.1, 2, 3, 4, 5, 6, 7, Pravesh Lamichaney and Sanjay Biswakarma. On 16.10.2019 the learned Chief Judicial Magistrate recorded that the charge-sheet did not have any material against Pravesh Lamichaney and Sanjay Biswakarma and accordingly discharged them. The learned Chief Judicial Magistrate however, found *prima facie* materials against the petitioner nos.1, 2, 3, 4, 5, 6 and 7 (jointly referred to for convenience as the accused persons). He accordingly framed charges under section 142, 143, 324 and 326 read with 149 IPC. When the accused persons pleaded not guilty the trial commenced and till date 12 witnesses have deposed. During the trial it transpires that the petitioners entered upon a deed of compromise dated 23.03.2021. The compromise deed records that due to the intervention of family, friends and relatives they have settled their disputes amicably and the complainants do not desire to pursue the matter further against the accused

persons. The petitioners also agree to live peacefully in the future.

2. Section 143, 324 and 326 read with 149 IPC are all non-compoundable offences.

3. Ms. Rachhitta Rai, learned counsel for the petitioners relied upon the judgment of the Supreme Court in ***Narinder Singh vs. State of Punjab***[1]***; State of Madhya Pradesh vs. Laxmi Narayan***[2] and ***Satish Sharma vs. State (NCT of Delhi)***[3] and submitted that in view of the compromise entered between the complainants and the accused persons the FIR and the pending criminal proceedings may be quashed in exercise of this court's inherent power under section 482 Cr.P.C. It was submitted that the accused persons are young people who have just started out with their lives. They are either employed in the Government, private enterprise or are doing their own business to make a living. None of them are habitual offenders and this is the first incident in which they have been alleged to have committed any offence. The accused person deeply regret the incident and if this court would allow the *bona fide* compromise to bury their differences with the complainants they would never involve themselves in any activity which would bring disrepute.

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[1] (2014) 6 SCC 466
[2] (2019) 5 SCC 688
[3] (2020) 15 SCC 344

4. Mr. Yadev Sharma, learned Additional Public Prosecutor submits that looking at the totality of the alleged offences in the manner in which it was committed the State has no objection if the complainant and the accused person resolved their dispute amicably.

5. In ***Gian Singh vs. State of Punjab***[4] the Supreme Court summarized the position with regard to the power of the High Court in quashing the criminal proceedings in exercise of inherent jurisdiction thus:

> ***"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*

[4] (2012) 10 SCC 303

> *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.***"***

6. In ***Narinder Singh*** (supra) the Supreme Court laid down the following principles:

> ***"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:*
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> *(i) ends of justice, or*
>
> *(ii) to prevent abuse of the process of any court.*
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> *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 the 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 hand, those criminal cases having overwhelmingly and predominantly 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 are 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/delicate 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 latter 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 to 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.***"***

7. In ***Yogendra Yadav vs. State of Jharkhand***[5] the Supreme Court held:

"4. *Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab [Gian Singh v. State of*

[5] (2014) 9 SCC 653

Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. *In Gian Singh [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] this Court has observed that: (SCC p. 340, para 58)*

> *"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 proceedings will be an exercise in futility and justice in 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."*

Needless to say that the above observations are applicable to this Court also.

6. *The learned counsel for the parties have requested this Court that the impugned order [Yogendra Yadav v. State of Jharkhand, Criminal MP No. 1915 of 2011, order dated 4-7-2012 (Jhar)] be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise.*

> *Affidavit has been filed in this Court by complainant Anil Mandal, who is Respondent 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. The learned counsel for the parties have confirmed that the disputes between the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. The State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings.***"***

8. In ***Laxmi Narayan*** (supra) the Supreme Court considered all its previous judgments on the point and held as under:

> ***"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 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;*
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> ***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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. *While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.***"**

9. In ***Ramgopal vs. State of Madhya Pradesh***[6] the Supreme Court dealt with a case in which the accused had been convicted for various offences under section 294, 323 and

[6] 2021 SCC OnLine SC 834

326 read with section 34 IPC. The appellant No.1 therein was alleged to have struck the complainant with a *pharsa*, which resultantly cut off the little finger of his left hand. During the pendency of the appeal a compromise had been entered between the parties. The Supreme Court held:

> ***"11.*** *True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.*
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> ***12.*** *The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.*
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> ***13.*** *It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of*

> *applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh v. State of Punjab*[3] *and Laxmi Narayan (Supra).*
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> ***14.*** *In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."*

10. The law regarding the power of the High Court in quashing FIRs on settlement arrived at between the parties under section 482 of the Cr.P.C. is therefore, well settled by the above decisions of the Supreme Court.

11. The offences alleged to have been committed by the accused persons are all non-compoundable offences but none a heinous offence. The evidence so far indicates that

the injuries caused on the complainants were simple injuries except in the case of one whose little finger was fractured due to the alleged assault. There is nothing to indicate that the compromise deed entered between the complainant and the accused persons was compromised. The accused persons, as the records indicate, are first time offenders in a case yet to be determined. The State-respondent has not brought any record to indicate otherwise. The records so far reveal that the initial verbal spat was between one of the complainants and one of the accused persons who were known to each other from before. What transpired thereafter seems to be the fall out of the unresolved differences between the two of them which ultimately dragged other friends now grouped together and taking sides. The manner in which the accused persons sought to resolve their dispute with the complainants is wanting and unbecoming of good citizens. Youth however, has its ebbs and floods. The present case seems to be a compounding of a private dispute. It seems it was purely personal or having overtones of criminal proceedings of private nature. The nature of injury sustained does not exhibit mental depravity the quashing of which would override public interest as cautioned by the Supreme Court. The complainants as well as the accused

persons on their own volition have buried their differences and wish to accord a *quietus* to their disputes. The quashing of the criminal proceedings may advance peace, harmony, and fellowship amongst them. In the totality of the facts and circumstances of the case, keeping in mind that handing out punishment is not the sole form of delivering justice and societal method of applying laws evenly is always subject to lawful exceptions, this court is of the considered view that discretion would be better exercise in allowing the compromise to bury the difference between them. This would allow the accused persons and the complainants to get on with their lives as good citizens.

12. Following the ratio of the judgments of the Supreme Court discussed above the FIR No. 237/2018 dated 09.12.2018 as well as G.R. Case No. 174 of 2019 are hereby quashed.

(Bhaskar Raj Pradhan)
Judge

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