THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

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

Crl. M. C. No. 06 of 2022

1. Pem Lhamu Lepcha,
W/o Late Hem Bahadur Rai,
R/o Singtam,
A/p Forest Colony, Govt. Quarter,
Baluwakhani, Gangtok.

2. Amiran Chettri @ Amir,
S/o Late Kamal Chettri,
R/o Forest Colony,
Gangtok. ..... Petitioners

Versus

State of Sikkim.

.....Respondent

Application under Section 482 of the Code of Criminal Procedure, 1961.

(*For quashing the FIR bearing No.139/2020 dated 10.09.2020 and the proceedings of G.R. Case No.91/2021 State of Sikkim vs. Amiran Chettri @Amir which is pending before the Court of the Ld. Chief Judicial Magistrate, East Sikkim at Gangtok).*

Appearance:

Mr. Sajal Sharma, Ms. Roshni Chettri, Ms. Puja Kumari Singh Advocates for the Petitioners.

Mr. Thinlay Dorjee Bhutia, Mr. Yadev Sharma, Additional Public Prosecutors and Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-respondents.

Date of hearing : 25.08.2022
Date of Judgment : 29.08.2022

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The petitioner no.1 who is the complainant and the petitioner no.2 who is the accused person facing trial in G.R. Case No.91 of 2021 has approached this court after

entering into a compromise agreement dated 26.04.2022 to quash the proceedings pending before the Court of the learned Chief Judicial Magistrate, East Sikkim at Gangtok. Evidently, the petitioner no.2 is charged with the offences of having committed theft in a dwelling house under Section 380 IPC and for lurking house-trespass or house-breaking by night in order to commit offence with imprisonment under Section 457 IPC. It is alleged that he had committed theft of a bag which contained, *inter alia,* an amount of Rs.50,000/- from the petitioner no.1's house at Government quarter, forest colony, Gangtok. Admittedly, out of 6 prosecution witnesses four have been examined.

2. Heard Mr. Sajal Sharma, learned counsel for the petitioners who sought to rely upon the judgment of the Supreme Court in ***Gian Singh vs. State of Punjab & Anr***.[1]; ***Yogendra Yadav vs. State of Jharkhand***[2] and ***Ramgopal vs. State of Madhya Pradesh***[3]. It is argued that since there is a compromise between the petitioners and the petitioner complainant has willingly desired to forgive the accused-petitioner, it should be accepted and they be allowed to bury their differences.

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[1] (2012) 10 SCC 303
[2] (2014) 9 SCC 653
[3] (2021) SCC OnLine SC 834

3. In ***Gian Singh*** (supra) the Supreme Court held :

> ***"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. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.***"***
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> ***"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.***"**

4. In ***Yogendra Yadav*** (supra) the Supreme Court referring to its earlier judgment in ***Gian Singh*** (supra) held that the observation made in paragraph 58 therein would also be applicable in the facts of the case and quashed the criminal proceedings against two set of accused persons who had filed First Information Reports (FIR) against each other on the basis of the compromise they entered while the cases were going on before the Second Additional Judge. While doing so the Supreme Court took into consideration the compromise between the parties who were found to be neighbours and desired to continue the harmonious relationship pursuant to the compromise. In the first case the FIR was registered under Sections 341, 323, 324, 504 and 307 read with 34 IPC and in the other the FIR was registered under Sections 147, 148, 149, 448, 341, 323 and 380 IPC.

5. In ***Ramgopal*** (supra) the Supreme Court examined two criminal appeals pertaining to two different and distinct occurrences. In the first case the accused persons were

convicted under Sections 294, 323 and 326 read with 34 of the Indian Penal Code, 1860 (IPC). The matter reached the High Court where they sought the compounding of the offences which was not accepted. Ultimately the Supreme Court was approached seeking compounding of their *actus reus* under Section 326 IPC in view of the settlement between the parties. In the other case the accused persons were tried and convicted under Sections 143, 144, 147, 148, 342, 324 and 326 read with Sections 149 IPC. Although the parties entered upon a compromise, it was placed only before the Supreme Court with the prayer to compound the offences. In both the appeals the appellants sought to invoke the Supreme Court's power under Article 142 of the Constitution of India to do complete justice to them. While doing so the Supreme Court examined the High Court's power under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and held:-

> ***"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 noncompoundable. 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.*

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).*

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."*

"19. *We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320*

> *Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind :* ***(i)*** *Nature and effect of the offence on the conscious of the society;* ***(ii)*** *Seriousness of the injury, if any;* ***(iii)*** *Voluntary nature of compromise between the accused and the victim; &* ***(iv)*** *Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.****"***

6. The learned Additional Public Prosecutor on the other hand vehemently object to the quashing of the present proceedings on the ground that the trial has reached the final stages and the material witnesses have already been examined. In fact the State-respondents have filed their written objection to the quashing of the criminal proceeding. The objection is to the fact that the compromise has been entered after the completion of the deposition of the prosecution witnesses' nos. 1 to 4 and which evidence is not very promising to the accused-petitioner. As such it is an attempt to circumvent the course of criminal administration of justice. He also relied upon paragraph 29.7 of the judgment of the Supreme Court in ***Narinder Singh vs. State of Punjab***[4] which holds:

> ***"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*

[4] (2014) 6 SCC 466

> *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. The learned Additional Public Prosecutor fairly submitted that the judgment of the Supreme Court in ***Narinder Singh*** (supra) has been examined by a three Judge Bench of the Supreme Court in ***State of Madhya Pradesh. vs Laxmi Narayan***[5] and in paragraph 15.4 it was explained as under:-

> ***"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*

[5] (2019) 5 SCC 688

> *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;"*

8. Keeping in mind the pronouncements of the Supreme Court as quoted above it is important for this court to consider the nature and gravity of the alleged offences. The charge under Section 380 IPC involves imprisonment for a term which may extend to seven years and fine. The allegation is commission of offence of theft in a dwelling house of the complainant-petitioner no.1 of a ladies handbag which contained *inter alia* an amount of Rs.50,000/-. The second offence alleged is lurking house trespass of house breaking at night to commit theft. The evidence of the complainant-petitioner is that the accused-petitioner was seen by her grabbing her sister's bag that was kept at the window sill from outside the house. The punishment prescribed under Section 457 IPC for five years and fine and if the offence intended to be committed is theft, the term may be extended to 14 years.

9. It is seen that both the offences under Section 380 and 457 IPC are not heinous offences of mental depravity or offences like murder, rape, dacoity, etc.. It is also noted that they are not offences under any special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity.

10. The charge under Section 380 IPC framed by the learned Chief Judicial Magistrate alleges that the accused-petitioner committed theft of one ladies handbag along with its contents which also contained cash amounting to Rs.50,000/- from the complainant-petitioner's house, which was used as a human dwelling. The charge under Section 457 IPC alleges that the accused-petitioner committed lurking house trespass by night by entering into the house of the complainant-petitioner in order to commit theft. The deposition of the complainant-petitioner however, clarifies that she had kept her wallet inside her sister's bag which was kept by her at the window sill. It is deposed that the complainant-petitioner saw the curtain of the window move and the accused-petitioner grabbing her sister's bag that was kept at the window sill after which they went outside looking for him but could not find him. The complainant-petitioner's sister was also examined who deposed that she also saw the accused-petitioner taking

her bag from outside. Section 442 IPC provides that whoever commits criminal trespass by entering into or remaining in any building is said to commit house trespass. The evidence suggests that the accused-petitioner had not physically entered the building but stolen the bag lying in the window sill from outside. It cannot thus be said that he committed lurking house trespass or house breaking by night to commit theft. In such view of the matter with the evidence on record it may not be possible to record a conviction under Section 457 as contemplated therein.

11. The depositions of the prosecution witnesses also reflect that the complainant-petitioner knew the accused-petitioner and that they were neighbours. It is also noted that the complainant-petitioner desires to forgive the accused-petitioner for the alleged act. The complainant-petitioner who personally appeared on 23.08.2022 was asked to reflect on the compromise deed and informed this court on the next date. On 25.08.2022 the complainant-petitioner appeared in person and stated that she has reflected on the compromise deed and would want to forgive the accused-petitioner. It is seen that the alleged offence is not a heinous offence and the desire of the complainant-petitioner is genuine, actuated by the fact that

the accused-petitioner has recently married and has a decent job to start his life afresh. The accused-petitioner assured this court that he will henceforth lead a respectable life and not indulge in any illegal or criminal activities. Although, there is no way to gauge the correctness of the assurance, keeping in mind his age and the circumstances he is in this court is of the view that the consequential effect of permitting the compromise and the felony remaining unpunished, would not tinker with or paralyse the very object of the administration of criminal justice system. In ***Ramgopal*** (supra) the Supreme Court has clearly laid down those criminal proceedings involving none heinous offences can be annulled irrespective of the fact that the trial has already been concluded or appeal stands dismissed against conviction. The criminal proceeding in G.R. Case No. 91 of 2021 ***(State of Sikkim vs. Amiran Chettri @ Amir)*** and FIR bearing No. 139/2020 dated 10.09.2020 are also hereby quashed duly taking on record the compromise deed dated 26.04.2022.

12. The petition under Section 482 Cr.P.C filed by the petitioners is hereby allowed.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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