

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 28.03.2023

Pronounced on: 31.03.2023

CRM(M) No. 183/2023

Gurdeep Kumar and another

.....Appellant(s)/Petitioner(s)

Through: Mr. Muzaffar Iqbal Khan, Advocate.

Vs

Union Territory of J&K

..... Respondent(s)

Through: Mr. P. D. Singh, Dy. AG.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. The present petition has been filed by the complainant and the accused who happen to be the wife and the husband respectively, for quashing the charge-sheet bearing No. 151/2022 arising out of FIR No. 182/2022 for commission of offence under Section 436 IPC registered with Police Station, R. S. Pura, which is subjudice before the court of learned 3rd Additional Sessions Judge, Jammu.
2. It is stated that the above mentioned FIR was registered against petitioner No. 1 at the instance of petitioner No. 2 on the basis of complaint filed by petitioner No. 2, wherein it was stated that she had solemnized marriage with petitioner No. 1 eleven years ago and they were blessed with one male and one girl child who are at present 8 and 10 years of age respectively. It was also stated that right from the very beginning petitioner No. 1 used to quarrel with petitioner No. 2 and in the year 2007, the petitioner No. 1 had burnt the house and also on 27.09.2022, when petitioner No. 2 had gone to attend a marriage in

Hiranagar along with her children, in her absence, the petitioner No. 1 burnt all of her articles and other articles lying in the house. In fact, he had burnt whole of the articles of the house. The matter was investigated and after completion of the investigation, offence under Section 436 IPC was proved against petitioner No. 1 and charge-sheet was laid, which was ultimately transferred to the court of learned 3rd Additional Sessions Judge, Jammu. It is stated that the FIR has been lodged because of a marital discord between the petitioners and with the intervention of the elders and close relatives of the petitioners, the petitioners have entered into compromise voluntarily to lead a peaceful family life. In this regard, the petitioners have placed on record the compromise deed executed between them.

3. In view of the above, the petitioners have prayed for the quashing of the charge-sheet pending before the court of learned 3rd Additional Sessions Judge, Jammu.
4. Mr. Muzaffar Iqbal Khan, learned counsel for the petitioners submitted that the FIR was the outcome of the marital discord between the petitioners and as the petitioners have resolved their dispute amicably, the continuance of the proceedings would be nothing but a sheer abuse of process of law. He further submitted that the petitioner No. 1 is in custody and at present he is lodged in District Jail, Jammu in respect of the above mentioned FIR. He further submits that as the petitioners have resolved their dispute amicably, so the FIR and the consequent challan be quashed and the petitioner No. 1 be ordered to be released from the custody. He has placed reliance upon judgment of

the Hon'ble Apex Court in case titled "**Ramgopal and another V. The State of Madhya Pradesh**" reported in **2021 SCC Online 834**.

5. Mr. P. D. Singh, learned counsel for the respondent vehemently argued that the offence under Section 436 IPC is non-compoundable and heinous in nature, therefore, charge-sheet cannot be quashed only on the basis of compromise arrived at between the petitioners.
6. Heard and perused the record.
7. A perusal of the chargesheet reveals that the allegations levelled against petitioner No. 1 are that he burnt the articles of petitioner No. 2 and also other household articles. Both the petitioners are husband and wife. The statement of petitioner No. 2/complainant i.e. wife of petitioner No. 1 has been recorded before Registrar Judicial of this court, wherein she has admitted about the execution of compromise deed dated 06.02.2023 and she has further stated that she has no objection in case this Court quashes FIR No. 182/2022 dated 28.09.2022 registered with Police Station, R. S. Pura and also the consequent challan, pending before the court of learned 3rd Additional Sessions Judge, Jammu.
8. The petitioners admittedly are husband and wife and they are blessed with two children and it appears that because of a marital discord the petitioner No. 1 had burnt articles of not only petitioner No. 2, but articles of his house as well. Offence under Section 436 IPC is no doubt non-compoundable in terms of Section 320 of IPC, but the fact remains that the petitioner No. 1 has burnt not only articles of petitioner No. 2 but also articles of her house because of some marital

dispute with petitioner No. 2. The allegations are not with regard to the causing damage to property of public or third party and this is also a fact that now the petitioners have amicably settled the dispute. In **“State of Madhya Pradesh Vs. Laxmi Narayan”** reported in (2019) **5 SCC 688** the Apex Court has held as under:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

- (i) 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;
- (ii) 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;
- (iii) similarly, such power is not to be exercised for the offences under the special statutes like 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;
- (iv) 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/delegate 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 paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

- (v) 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. Further in **Ramgopal and another V. The State of Madhya Pradesh** reported in **2021 SCC Online 834**, the Hon’ble the Supreme Court has held as under:

“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 extraordinary 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 person, prior to and after the occurrence of the purported offence and/or other relevant considerations.

- 10.** In view of the above, this Court is of the considered view that as the complainant has herself filed the petition for quashing the charge-sheet along with her husband i.e. the accused, so continuance of the proceedings before the learned trial court in the charge-sheet filed against the petitioner No. 1 shall be nothing but a sheer abuse of process of law. As such, charge-sheet bearing No. 151/2022 arising out of FIR No. 182/2022 for commission of offence under Section 436 IPC registered with Police Station, R. S. Pura, which is subjudice before the court of learned 3rd Additional Sessions Judge, Jammu is quashed.
- 11.** Petitioner No. 1, who is at present lodged in District Jail, Jammu is ordered to be released forthwith.
- 12.** The Copy of this order be sent to the trial court and Superintendent District Jail, Jammu for information and compliance.

(RAJNESH OSWAL)
JUDGE

Jammu:
31.03.2023
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.