

Sr. No. 40

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

CRM (M) No. 628/2021
CrIM No. 1903/2021

Manohar Lal and others

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

Through: Mr. Maneesh Rampal, Advocate.
Petitioners in person

Vs

UT of J&K and others

..... Respondent(s)

Through: Mr. Jamrodh Singh, GA vice
Mr. Aseem Sawhney, AAG for Nos. 1 and 2
Mr. Z. A. Bhatti, Advocate for No. 3
Respondent No. 3 in person

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

JUDGMENT

1. The petitioners have filed the present petition under section 482 Cr.P.C. for quashing the criminal challan, titled, UT of J&K Vs Drashan Lal and others arising out of FIR bearing No. 196 of 2020 dated 23.07.2020 registered with Police Station, Domana, Jammu for commission of offences under Sections 447 and 147 IPC, pending before the Court of learned Excise Magistrate, Jammu on the ground that the petitioners and the respondent No. 3 have entered into a compromise and pursuant to that compromise, the parties have undertaken to withdraw all the litigations pending against them.

2. The respondent No. 3 is present in the Court and he is identified by his counsel. He submits that in view of the compromise arrived at between him and the petitioners, he has no objection in case this Court quashes the criminal challan mentioned above. The copy of the compromise deed is annexed with the petition.
3. Learned counsel for the official respondent submits that in light of the present facts and circumstances of the case, appropriate orders as this Court deem fit may be passed.
4. The dispute between the parties is with regard to the land regarding which the FIR was lodged by respondent No. 3 and now the parties have settled their dispute. The offence under Section 147 is non compoundable, whereas the other offence mentioned above is compoundable. It is settled law that once the dispute is predominantly civil in nature and is not against the society, the offences, though, non compoundable can be quashed by this Court while exercising powers under Section 482 Cr. P. C.
5. Reliance is placed on the judgment of the Apex Court in case titled, **State of M.P. v. Laxmi Narayan, (2019) 5 SCC 688**, in which the Apex Court has held:

'14. Now so far as the conflict between the decisions of this Court in *Narinder Singh* [*Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] and *Shambhu Kewat* [*State of Rajasthan v. Shambhu Kewat*, (2014) 4 SCC 149 : (2014) 4 SCC (Cri) 781] is concerned, in *Shambhu Kewat* [*State of Rajasthan v. Shambhu Kewat*, (2014) 4 SCC 149 : (2014) 4 SCC (Cri) 781], this Court has noted the difference between the power of compounding of offences conferred on a court under Section 320 CrPC and the powers conferred under Section 482 CrPC for quashing of criminal proceedings by the High Court. In the said decision, this Court further observed that in compounding the

offences, the power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC and the court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing criminal proceedings or criminal complaint under Section 482 CrPC is guided by the material on record as to whether ends of justice would justify such exercise of power, although ultimate consequence may be acquittal or dismissal of indictment. However, in the subsequent decision in *Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54]*, the very Bench ultimately concluded in para 29 as under :

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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:

- (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.

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.”

6. In view of the above, the present petition is allowed and the criminal challan, titled, Union Territory of J&K Vs. Drashan Lal and others arising out of FIR bearing No. 196 of 2020 dated 23.07.2020 registered with Police Station, Domana, Jammu for commission of offences under

Sections 447, 147 IPC, pending before the Court of learned Excise Magistrate, Jammu is quashed.

7. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
12.11.2021
Neha

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

