

Himachal Pradesh High Court

Shankar Singh And Others vs State Of H.P. And Another on 29 November, 2018

Bench: Honourable Mr. Chauhan

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA .

Cr.MMO No. 431 of 2018.

Date of decision: 29.11.2018.

Shankar Singh and othersPetitioners.

Versus State of H.P. and another Respondents.

Coram The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?1 No For the Petitioners : Mr. B.S. Attri, Advocate.

For the Respondents : Mr.Vinod Thakur and Mr. Sudhir Bhatnagar, Addl. A.Gs., with Mr. Bhupinder Thakur, Dy.

A.G., for respondent No.1.

Mr. S,K,Banyal, Advocate, for respondent No.2.

Tarlok Singh Chauhan, Judge (Oral).

The petitioners have approached this Court for quashing of FIR No. 115 of 2015 dated 10.07.2015, registered at Police Station, Sadar, Solan, District Solan, H.P. under Sections 498-A, 34 IPC and all consequential proceedings emanating from the same.

Whether the reporters of the local papers may be allowed to see the Judgment?Yes

2. It is averred that the marriage between petitioner .

No.3 and respondent No. 2 was solemnized at village and post office, Damkari, Tehsil and District Solan, in the year 2009 as per Hindu rites and ceremonies. It is further averred that with the passage of time the relations between petitioner No.3 and respondent No.2 got strained on account of their mutual differences and on account of incompatible temperament, the aforesaid FIR came to be registered against the petitioners by respondent No.2.

3. Today, all the petitioners, except petitioner No.2; and respondent No.2 are present in the Court and they are duly identified by their respective counsels. Statement of respondent No.2 has been recorded separately, wherein she has categorically stated that in view of the compromise Ex.CX arrived at between her and the petitioners, she does not intend to pursue FIR No. 115 of 2015 dated

10.07.2015 and all consequential proceedings thereto.

4. However, the moot question is whether the Court in such like cases can quash the proceedings. The law on this subject has been summed up in a recent judgment of the Hon'ble Supreme Court in Narinder Singh & Ors. V. State of Punjab & Anr. JT 2014 (4) SC 573, wherein it was held as .

under:

"(I) 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. (II) 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. (III) 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 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.

(IV) On the other, those criminal cases having overwhelmingly and pre--dominantly 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.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is 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/delegate 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 later 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.

(VII) 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 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."

5. It would be seen that prior to Narinder Singh's case (supra), a three Hon'ble Judges Bench had considered the relevant scope of Sections 482 and 320 Cr.P.C. in Gian Singh .

versus State of Punjab and another (2012) 10 SCC 303 wherein it was held that power of the High Court in quashing of the criminal proceedings or FIR or complaint in exercise of its inherent power is distinct and different from the power of a Criminal Court for compounding offences under Section 320 Cr.P.C. While exercising inherent power of quashment under Section 482 Cr.P.C., the Court must have due regard to the nature and gravity of the crime and its social impact. It warned the Courts, the High Court for quashing proceedings in heinous and serious offences of mental depravity, murder, rape, dacoity etc. which principles have been reported and reaffirmed in Narinder Singh's case (supra).

6. Now, the further question remains whether this Court can quash the FIR where the petitioners have been charged under Sections 498-A read with Section 34 IPC. This question need not detained this Court no longer in view of the judgment of the Hon'ble Supreme Court in Dimpley Gujral, W/o Vivek Gujral and others versus Union Territory through Administrator, UT, Chandigarh and others (2013) 11 SCC 497 wherein the Hon'ble Supreme Court seized of a case seeking quashment of FIR and its consequential proceedings wherein the accused had been charged under Sections 147, 148, .

149, 323, 307, 452 and 506 IPC and the Hon'ble Supreme Court after relying upon the judgment of Gian Singh's case (supra) held as follows:-

"7. In certain decisions of this court in view of the settlement arrived at by the parties, this court quashed the FIRs though some of the offences were non-compoundable. A two Judges' Bench of this court doubted the correctness of those decisions. Learned Judges felt that in those decisions, this court had permitted compounding of non-

compoundable offences. The said issue was, therefore, referred to a larger bench.

The larger Bench in Gian Singh v. State of Punjab (2012) 10 SCC 303 considered the relevant provisions of the Code and the judgments of this court and concluded as under: (SCC pp.342-43, para 61) "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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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 criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

r (emphasis supplied)

8. In the light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No.163 dated 26/10/2006 registered under Section 147, 148,149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising there from including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

7. On the basis of the aforesaid exposition of law, this Court is of the opinion that this is a case where the continuation of the criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of personal nature and quashing FIR .

and proceedings would bring out peace between two sides.

8. In these circumstances, FIR No. 115 of 2015 dated 10.07.2015, registered at Police Station, Sadar, Solan, District Solan, H.P. under Sections 498-A, 34 IPC registered against the petitioners and all consequential proceedings emanating from the same i.e. Case No. 179/2015 titled State of H.P. vs. Shankar Singh and others, pending in the Court of learned Judicial Magistrate 1st Class (I), Solan, District Solan, H.P., are quashed.

9. The petition is disposed of in the aforesaid terms, so also the pending application.

29th November, 2018. (Tarlok Singh Chauhan), (GR) Judge.