

HON'BLE SRI JUSTICE RAVI NATH TILHARI

I.A.No.2 OF 2021

IN

CRIMINAL APPEAL No.1299 OF 2017

JUDGMENT:

1. Heard Sri K. Suresh Reddy, learned counsel for the appellants, Sri S. Venkata Sainath, learned Assistant Public Prosecutor for the 1st respondent/State and Sri A. Rama Krishna, learned counsel for the 2nd respondent.

2. The appellant No.1 herein was found guilty for the offence punishable under Sections 376, 342, 417 and 420 IPC. The appellant No.2 was found guilty for the offence punishable under Section 109 r/w Sections 376 and 342 read with 34 IPC. They were convicted and sentenced vide judgment dated 23.10.2017 in Session Case No.217 of 2013 by the learned Court of Sessions Judge, Mahila Court, Vijayawada.

3. The application I.A.No.2 of 2021 is filed with the following prayer:

“Hon’ble Court may be pleased to permit the petitioner/2nd respondent to compromise the matter with the petitioners/accused Nos.1 and 2 in S.C.No.217 of 2013 on the file of the Court of Sessions Judge, Mahila Court, Vijayawada and pass such other order or orders in the interest of justice.”

4. The joint memo has been filed by both the parties i.e., by the petitioners 1 & 2 and the 2nd respondent, stating in paragraph No.2 thereof as under:-

“2. It is further humbly submitted that, the 2nd respondent and petitioner No.2 are close friends having studied together while we are prosecuting BeD. The 2nd respondent and petitioner No.1 fell in love and they decided to marry, but due to obvious reasons it was not materialized. Due to some misunderstandings respondent No.2 gave a report to the police which resulted in punishing the petitioners. While the matter stood thus, the well-wishers, elders from both sides including community people convened a meeting and reprimanded both to put an end to the unnecessary ill feelings in the minds of both parties in order to

lead peaceful life in the locality. The 2nd appellant was a close friend of 2nd respondent, as such she realized to end the agony met by both families, as such coming forward to compound the case on her own will and accord. There is no threat or coercion in filing this petition to compound the offence. The 2nd respondent has no objection to allow the appeal filed by the appellants by recording compromise by setting aside the conviction and sentence.”

5. Sri K. Suresh Reddy, learned counsel for the appellants submits that the appeal can be decided setting aside the conviction and sentence order and the convicts can be acquitted in view of the compromise. His submission is that the offence under Section 376 IPC is purely personal in the facts and circumstances of the case as stated in the joint memo/application/I.A.No.2 of 2021 which cannot be termed as heinous offence considering that the 2nd respondent and the petitioner No.2 were close friends; had studied together and while pursuing B.Ed., they fell in love and decided to marry but it could not be materialized and due to that reason and misunderstanding, the report was lodged by the 2nd respondent. He has placed reliance on the judgment in the case of **Ramgopal and another vs. State of Madhya Pradesh**¹ and **Parvpal Rajivpal Singh vs. State of Gujarat**².

6. Sri A. Rama Krishna, learned counsel for the 2nd respondent has adopted the arguments of the learned counsel for the appellants.

7. Sri S. Venkata Sainath, learned Assistant Public Prosecutor appearing for the State, however, opposes the application and submits that the appellants have been convicted of the offences including under Section 376 IPC which is a heinous offence and cannot be termed as a personal offence. It has its impact on the society and as such the

I.A.No.2 of 2021 cannot be allowed. He has placed reliance on the judgment in the case of **Gian Singh vs. State of Punjab and another**³.

8. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

9. The following point arises for consideration

“whether on the basis of the joint memo/compromise the appeal can be allowed, setting aside the judgment dated 23.10.2017 and acquitting the appellants for the offences which includes the offence of Rape punishable under Section 376 IPC?

10. The law on the point as involved herein is not *res integra*. The Court proceeds to consider some cases on the subject.

11. In **Gian Singh** (supra), the Constitution Bench of the Hon'ble Supreme Court has summed up the position in para no. 61, as under:-

"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."

12. In **Narinder Singh** (supra), the Ho'nble Supreme Court discussed in detail as to under what circumstances the High Court should accept the settlement between the parties and quash the proceedings and

under what circumstances it should refrain from doing so. This judgment laid down certain principles for guidance of the High Court in giving adequate treatment to the settlement between the parties and in exercising its inherent powers under [section 482](#) of the Code. Paragraph no. 29 of the judgment reads 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:

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.

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.

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.

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.

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.

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.

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."**

13. In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujrat and another**⁴ the Hon'ble Apex Court again summarised and laid down principles which emerged from the precedents on the subject, in paragraph no.16 of the judgment, which are as follows:-

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

[Section 482](#) preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

There is yet an exception to the principle set out in propositions 16.8 and 16.9, above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere

dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

14. In **State of Madhya Pradesh Vs. Laxmi Narayan and others**⁵, the Hon'ble Supreme Court, again held that the power to quash the criminal proceedings in exercise of power under [Section 482](#) of the Code 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. Paragraph 15 of **Laxmi Narayan** (Supra) is being reproduced as under:-

"15. 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:-

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;

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;

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;

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 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;

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.”

15. Thus, the Hon’ble Supreme court in **Gian Singh** (Supra), **Narinder Singh** (supra) **Parbatbhai Aahir** (supra) and in **Laxmi Narayan** (supra) has consistently laid down that the power to quash the criminal proceedings in view of settlement is not to be exercised in those prosecutions which involve heinous and 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 or Economic offences including the financial and economic wellbeing of the State. The settlement between the offender and the victim can have no legal sanction at all in such offences. Any compromise between the victim and the offender in relation to such offences, cannot provide for any basis for quashing the criminal proceedings. Such offences are not private in nature and have a serious impact on the society.

16. The offence under [Section 376](#) IPC falls in the category of serious and heinous offences and is treated as crime against the society and not against an individual alone. Rape is the most morally and physically reprehensible crime in a society. It is an assault on the body, mind and privacy of the victim. In **Shyam Narain Vs. State** (NCT of Delhi)⁶, the Hon’ble Supreme Court observed that rape is an assault on the individuality and inherent dignity of a woman. A monstrous burial of

her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society. In **State of Madhya Pradesh Vs. Madan Lal**⁷, the Hon'ble Supreme Court held that rape or attempt to rape are crimes against the body of a women which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. Reputation is the richest jewel one can conceive of in life. No one can allow it to be extinguished. When a human frame is defiled, the "Purest Treasure" is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. In **Shimbu Vs. State of Haryana**⁸, the Hon'ble Supreme Court held that rape is an offence against the society and is not a matter to be left for the parties to compromise and settle. It was further held that in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the court to exercise the discretionary power.

17. The submission of the learned counsel for the private parties that the offence of rape is purely personal to the parties and not an offence affecting the society, is misconceived and is hereby rejected. Rape is an offence against the society and it is not a matter to be left for the parties to compromise and settle. The concept of compromise, under no circumstances, can be thought of as there cannot be a compromise or settlement against the honour and dignity of a woman.

18. In **Narinder Singh** (supra), the Hon'ble Supreme Court has clearly laid down that 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. In **Narinder Singh** (Supra) the charge was proved under Section 307 IPC and the conviction was recorded for that heinous crime, it was held that there was no question of sparing a convict found guilty for such a crime.

19. In **Ramgopal** (supra) upon which much reliance has been placed by the learned counsel for the appellants what the Hon'ble Supreme Court has held is with respect to non heinous offences or where the offences are predominantly of a private nature, which can be annulled irrespective of the fact that the trial had been concluded or appeal stands dismissed against conviction, if compromise is struck post conviction and even in those cases the exercise of such discretion is to be with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise had been arrived at and with due regard to the nature of the incident; but that is not with respect to heinous offences. It has been clearly laid down that in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed in **Narinder Singh** (supra) and **Laxmi Narayana** (supra). It is apt to reproduce paragraph No.13 of **Ramgopal** (supra) as follows:

"13. It appears to us that criminal proceedings involving nonheinous offences or where the offences are predominantly 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 extraordinary 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 & Ors. vs. State of Punjab & Ors.](#)³ and [Laxmi Narayan \(Supra\)](#)".**

20. In **Ramgopal** (supra), the conviction was not for the offence under Section 376 IPC which is a heinous offence. The appellants, therefore cannot derive any benefit from the judgment in **Ramgopal** (Supra).

21. In the present case the appellants have been convicted of a heinous offence u/s.376 IPC by the trial Court and therefore any question of sparing them on mere compromise does not arise.

22. In **Parvpal Rajivpal Singh** (supra), the judgment on which reliance is placed by the learned counsel for the appellants is distinguishable as in that case there was no conviction by the time, the compromise was filed. That case was at the stage of after filing of the charge sheet, whereas in the present case there is order of conviction

and the compromise/settlement has been filed at the appellate stage. Further, in view of the clear pronouncement of Hon'ble Supreme Court in the cases discussed above, I am not inclined to take the view as has been taken by the High Court of Gujarat in **Parvpal Rajivpal Singh** (supra).

23. The submission of the learned counsel for the appellants that it was a case of love affair and there was promise to marry and therefore it is not a case of rape cannot be accepted at this stage of considering the point in issue to set aside the conviction on mere settlement between the parties, in view of the clear finding of guilt and conviction for the offences u/s 376 IPC recorded by the learned trial Court. Such a plea would require consideration of the evidence on record and the circumstances to arrive at a conclusion if there was promise to marry at all, if such promise was false since its inception or it was a true promise but due to certain reasons could not be fulfilled or physical relationship was on such promise and it was voluntary or under some misconception of fact, so as to constitute or not an offence of rape. This can be done, if occasion arises, only while deciding the appeal on merits.

24. For all the aforesaid reasons, this court is of the considered view that on the basis of the compromise/settlement between the appellants herein and the respondent No.2, the order of conviction cannot be set aside nor the appellants can be acquitted of the offences for which there is conviction, by allowing the appeal on any settlement. The point framed in paragraph 9 above is answered accordingly.

25. I.A.No.2 of 2021 therefore deserves to be rejected and is accordingly rejected.

26. It is clarified that any observations made in this order is only for the purpose of deciding the I.A.No.2 of 2021 and shall have no bearing on the decision of the appeal on merits.

RAVI NATH TILHARI, J

Date:24.12.2021,

Note:

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