

Allahabad High Court

Dr. Mohd. Ibrahim And Ors. vs State Of U.P. And Ors. on 3 February, 2022

Bench: Subhash Vidyarthi

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 35

Case :- APPLICATION U/S 482 No. - 4690 of 2021

Applicant :- Dr. Mohd. Ibrahim And Ors.

Opposite Party :- State Of U.P. And Ors.

Counsel for Applicant :- Farooq Ayooob

Counsel for Opposite Party :- G.A., Farakshan Khatoon, Pooja Tiwari

Hon'ble Subhash Vidyarthi, J.

Heard Mr. Farooq Ayooob, learned counsel for the applicants as well as Mr. Veer Raghav Chaubey, learned AGA for the opposite party no. 1 - State and Ms. Farakshan Khatoon, learned counsel for opposite parties no. 2 and 3.

By means of the present application under Section 482 Cr.P.C. the applicants have sought quashing of the summoning order dated 27.08.2016 passed by the learned Additional Chief Judicial Magistrate, Court No. 19, Barabanki in Case No. 2514 of 2016 arising out of charge-sheet No. A-133/16 dated 31.05.2016 filed in case Crime No. 0176 of 2016 under Sections 147, 148, 149, 323, 504, 506, 427, 307 IPC, Police Station Safdarganj, District Barabanki.

On 31.05.2016 the opposite party no. 2 had filed an FIR alleging that there arose a property dispute between the parties and the revenue authorities had demarcated the land about 22 days ago. On 31.05.2016 the applicants started tiling the informant's farms and upon protest they assaulted and threatened the opposite parties no. 2 and 3. On 28.07.2021 the parties have entered into a compromise, a copy of whereof has been filed as Annexure No. 6 to the affidavit filed in support of the application in which it is stated that Mohd. Amin son of Shakur who was also named in the FIR has died on 02.07.2020. With the intervention of respected persons and relatives the parties have entered into a compromise and there is no dispute remaining between them and the opposite parties

no. 2 and 3 do not want any action against the applicants.

By means of an order dated 09.12.2021 this Court had directed that a letter be sent to the Additional Chief Judicial Magistrate, Court No. 19, Barabanki to verify the compromise dated 28.07.2021 in accordance with the procedure prescribed in law and send the report to this Court.

In compliance of the aforesaid order, the learned Additional Chief Judicial Magistrate, Court No. 19, Barabanki has submitted a report that the applicants and the opposite parties no. 2 and 3 have appeared before him along with their Advocates and they accepted the compromise.

Before proceeding to decide the instant application under Section 482 Cr.P.C. in terms of the compromise, it has to be examined as to whether the charge-sheet and the proceedings of a case can be quashed on the basis of a compromise entered into between the parties.

In *Narinder Singh and Others Vs. State of Punjab and Another*; (2014) 6 SCC 466, the Hon'ble Supreme Court has been pleased to sum up and lay down the principles by which the High Court would be guided in giving adequate treatment to the settlement between parties and exercising its power under Section 482 Cr.P.C. while accepting the settlement and quashing the proceedings or refusing to accept the settlement in the following words: -

" 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 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, 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.

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 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.

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 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."

The aforesaid decision in Narinder Singh and others (supra) has been followed by the Hon'ble Supreme Court in State of Madhya Pradesh vs Laxmi Narayan & Others; (2019) 5 SCC 688 and in that case the Hon'ble Supreme Court has held that: -

"15.1 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;

15.2 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;

15.3 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;

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 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;"

Copies of medico legal examination report of the opposite parties no. 2 and 3 have been filed along with the affidavit filed in support of the application under Section 482 Cr.P.C. which indicate that both of them have suffered contusions and abrasions which in the opinion of the Doctor are simple in nature and none of the persons has suffered any grievous injury which may support the charge of committing an offence under Section 307 IPC.

Examining the facts of the present case in light of the aforesaid law laid by the Hon'ble Supreme Court, it transpires that the FIR was lodged stating that there was a property dispute between the parties. Although the FIR and the charge-sheet make a mention of Section 307 IPC, the medical examination report of the opposite parties no. 2 and 3 mentions simple injuries of contusions and abrasions only and there is no report of any serious injury having been suffered by the opposite parties no. 2 and 3. Further, none of the injuries is reported to have been inflicted on any vital part of the body of any of the injured persons. The injuries are reported to have been caused by hard and blunt object.

Keeping in view of the aforesaid facts, the chance of conviction of the applicants under Section 307 IPC is remote and bleak.

After lodging of the FIR and submission of charge-sheet the parties have entered into a compromise which has been verified by the Additional Chief Judicial Magistrate, Court No. 19, Barabanki and accepting the submissions of Mr. Farooq Ayoob, learned counsel for the applicants, Ms. Farakshan Khatoon, learned counsel for the opposite parties no. 2 and 3, both of whom have submitted that the charge-sheet and summoning order and the entire criminal proceedings in this regard be quashed.

The learned AGA has no objection against the application being allowed on the basis of the compromise.

Keeping in view of the entire facts, I am of the view that mere incorporation of Section 307 IPC in the FIR and the charge-sheet, would not be a bar to the compromise entered into between the parties to put an end to the disputes between them and the present case would fall within the exception carved out by the Hon'ble Supreme Court in Para 29.6 in Narinder Singh and others (supra) and para 15.4 of the judgment in the case of State of Madhya Pradesh vs. Laxmi Narayan & others (supra).

In view of the peculiar facts and circumstances of the case, the continuance of the proceedings of the case even after the parties have entered into a compromise would only result in persecution of the applicants, which would give rise to a failure of justice.

In view of aforesaid discussions, the instant application under Section 482 Cr.P.C. is allowed on the basis of the compromise dated 28.07.2021.

The summoning order dated 27.08.2016 passed by the learned Additional Chief Judicial Magistrate, Court No. 19, Barabanki in Case No. 2514 of 2016 arising out of charge-sheet No. A-133/16 dated 31.05.2016 filed in case Crime No. 0176 of 2016 under Sections 147, 148, 149, 323, 504, 506, 427, 307 IPC, Police Station Safdarganj, District Barabanki including the entire proceedings initiated thereafter are hereby quashed.

Order Date :- 3.2.2022 Santosh/-