

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

Crl. M. C. No. 04 of 2018

1. Shri Prem Singh Tamang,
Son of Kalu Singh Tamang,
Resident of Singling,
P.O. & P.S. Soreng,
West Sikkim.
2. Shri Milan Gurung,
Son of Shri A.B. Gurung,
Resident of Chakung,
P.O. & P.S. Soreng,
West Sikkim.

And

3. Miss Sushila Gurung,
Daughter of Lt. A.B. Gurung,
Resident of Dentam,
P.O. & P.S. Dentam,
West Sikkim.

... **Petitioner(s).**

versus

State of Sikkim
Through The Public Prosecutor,
High Court of Sikkim.

... **Respondent.**

**Petition under Section 482 of the Code of Criminal
Procedure, 1973**

Appearance:

Mr. Sudesh Joshi, Mr. Rinzing Dorjee Tamang and Mr. Girmey Bhutia, Advocates for the Petitioners.

Mr. J.B. Pradhan, Public Prosecutor with Mr. Santosh Kr. Chettri and Ms. Pollin Rai, Asstt. Public Prosecutors for the State.

ORDER
(11.04.2018)

Satish K. Agnihotri, CJ

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr. P.C."), seeking to quash the First Information Report (FIR) No. 333 of 2016 dated 22nd September 2016, lodged by the second petitioner against the first petitioner, wherein the second petitioner alleged that the first petitioner assaulted the second petitioner as well as the third petitioner, who happened to be the cousin sister of the second petitioner and consequential G.R. Case No. 228 of 2017 pending on the file of the Judicial Magistrate, Soreng Sub-Division, stationed at Gangtok, East Sikkim.

2. The facts in brief as culled out from the pleadings and documents appended thereto are that the second

petitioner lodged an FIR under Section 154 read with Section 157 of the Cr. P.C. on 22nd September 2016, which was registered as FIR No. 333/2016 against the first petitioner stating that the first petitioner called the second petitioner to his Lumsey Residence at 5th Mile, Gangtok. When he reached Lumsey Residence, the first petitioner along with his supporters came in his vehicle and started assaulting with blows on the chest and face of the second petitioner. Even his shirt was torn. On this, the third petitioner intervened and she was also beaten by the first petitioner misappropriately. Thereafter, some more people came forward and he was separated. The first petitioner also threatened to ruin the second petitioner's future.

3. On the basis of said FIR, challan was filed and a case was registered as General Register Case No. 228 of 2017 under the provision of Sections 323/354 of the Indian Penal Code, 1860 (for short, "IPC"). The Chief Judicial Magistrate, East Sikkim at Gangtok took cognizance on 20th July 2017. On taking cognizance, the case was referred to the Judicial Magistrate (First Class), East Sikkim at Gangtok on 20th July 2017. Subsequently, on 15th September 2017 the case was transferred to the Court of Judicial Magistrate,

Soreng Sub-Division, stationed at Gangtok for trial and disposal as per law.

4. During pendency of the trial, the petitioners entered into a compromise on 19th February, 2018 in following terms: -

"1. That the First Party freely in his own free will and without any force or coercion has compromised the matter/case same **being G.R. Case No.100 of 2017, State of Sikkim-versus-Milan Gurung** with the Second Party and does not want to pursue and press any charges against the Second Party any further and does not have any objection if the G.R. Case No. 100 of 2017 is compounded by the Hon'ble Court of Ld. Judicial Magistrate (First Class), Soreng Sub-Division, stationed at Gangtok, East Sikkim.

2. That the Second Party and the Third Party too freely without any force or coercion has compromised the matter/case same being **G.R. Case No. 228 of 2017, State of Sikkim versus Prem Singh Tamang** with the First Party and does not want to pursue and press any charges against the First Party any further and does not have any objection if the FIR No. 333/2016, U/S 323/354 of IPC, 1860, Dated 22/09/2016, Time: 2100 hours and a Criminal Trial same being G.R. Case no. 228 of 2017 is quashed by the Hon'ble Court of Sikkim.

3. That the Second Party and the third Party freely agrees and undertakes to be present before the Hon'ble High Court of Sikkim and co-operate and facilitate the First Party during the proceedings under Section 482 of Cr. PC, for quashing of the pending criminal trial against him same being G.R. Case No. 228 of 2017, State of Sikkim versus Prem Singh Tamang arising out of FIR No.333/2016, U/S 323/354 of IPC, 1860, Dated 22/09/2016, Time:2100 hours.

4. That any differences and disputes that had arisen between all the three parties to this compromise deed have been settled as compromised and all the parties do not want to continue with the criminal case against eachother.

5. That all the contents of this agreement have been read over and explained to both the parties in Nepali language and after fully understanding the

contents of this agreement have scribed their respective signatures.”

5. Consequently thereupon, the instant petition is filed by the complainant/ victims and accused jointly, on 17th March, 2018.

6. Learned counsel appearing for the petitioners would submit that the parties have settled their disputes amicably, thus, no grievance survives. It was a case of assault which had taken place unintentionally, on a spur of moment, without there being any motive to harm the second and third petitioners on the part of the first petitioner. The second and third petitioners have realized that they are friends and as such to have peace in the relationship, the dispute was compromised and the FIR so lodged, and resultant criminal proceedings be quashed.

7. On the other hand, Mr. J.B. Pradhan, learned Public Prosecutor, would submit that the Compromise Deed executed between the parties is vague. It is further contended that one lady was assaulted and as such it is not a case which ought to be allowed, as the complainant and the accused are not close relations.

8. Heard learned counsel appearing for the parties, examined the pleadings and also the relevant documents appended thereto. There is no dispute that on 22nd September 2016 one more FIR was lodged by the Personal Security Officer of the first petitioner against the second petitioner making a complaint of assault by the second petitioner on the first petitioner. It appears that the quarrel between the first petitioner and the second petitioner was not premeditated and admittedly they are friends. The petitioners want to maintain peace and cordial relations among themselves. Thus, this petition is filed jointly to quash the FIR to strengthen the friendly relationship among them.

9. In the case of ***Manoj Sharma vs. State & Ors¹***, the issue of quashing of a first information report under Sections 420/468/471/34/120-B IPC either under Section 482 of the Code or under Article 226 of the Constitution, when the accused and the complainant have compromised and settled the matter between themselves was under consideration. The Supreme Court speaking through Hon'ble Mr. Justice Altamas Kabir (as he then was), observed as under:

¹ (2008) 16 SCC 1

"8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first information report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case."

Concurring, Hon'ble Mr. Justice Markandey Katju (as he then was) observed as under:

"27. There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304-B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 CrPC or in writ jurisdiction on the basis of compromise. However, in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable."

10. In yet another case, ***Sushil Suri vs. Central Bureau of Investigation & Anr.***², the scope, ambit and extent of Section 482 of the Code was examined by the Supreme Court, wherein it was held as under:-

"16. Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under CrPC; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although

² (2011) 5 SCC 708

the power possessed by the High Court under the said provisions is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasized that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."

11. A larger Bench of Supreme Court in ***Gian Singh vs. State of Punjab & Anr.***³, summed up the correct proposition of law in this respect as under: -

"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the end of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal

³ (2012) 10 SCC 30

proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

12. Subsequently, in ***Ashok Sadarangani & Anr. vs. Union of India & Ors.***⁴, referring to earlier judicial pronouncements made by it, the Supreme Court observed as under:

“24. Having carefully considered the facts and circumstances of the case, as also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the views that had been taken in *Nikhil Merchant case* or *Manoj Sharma case* or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimate, may conclude in a decision which may be of any consequence to any of the other parties.”

13. In ***Narinder Singh and others vs. State of Punjab and another***⁵, the Supreme Court held 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

⁴ (2012) 11 SCC 321

⁵ (2014) 6 SCC 466

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/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 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.”

14. In ***Yogendra Yadav and others vs., State of Jharkhand and another***⁶, wherein the accused was charge-sheeted for an offence committed, *inter alia*, under Section 307 IPC, which is non-compoundable, the Supreme Court held as under:

“4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compoundable by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab : (2012) 10 SCC 303*). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve more turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

⁶ (2014) 9 SCC 653

15. On studied examination, the common thread running through the aforesaid judicial pronouncements, it is well-settled that the High Court is competent to exercise its extraordinary jurisdiction under Section 482 of the Cr. P.C. to quash the criminal proceedings, even in non-compoundable cases, which do not fall in the category of heinous and serious offences and also does not involve offences like rape, murder, etc. Exercise of power by the High Court in such proceedings be done sparingly, conscientiously to secure ends of justice in the society and to prevent abuse of the process of any Court. The High Court is also required to examine the stage of the trial, whether quashing is sought at the initial stage or after examination of evidence or on completion of the trial, before pronouncement of the order. In the instant case, the first petitioner was charge-sheeted under the provisions of Sections 323 and 354 IPC. Offence under Section 323 IPC is compoundable and punishable with imprisonment of either description for a term of which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Under Section 354 IPC, the minimum punishment is one year extendable to five years, and shall also be liable to fine, which is not compoundable. The third petitioner has not lodged any complaint. The second petitioner stated to be the cousin brother of the third petitioner has lodged the complaint alleging that the

first petitioner has assaulted into the private parts of the third petitioner. Without going into merit of the case, when the third petitioner herself is a party to the Compromise Deed and also both the victims want to settle the dispute amicably, to secure peace and to further friendship, it cannot be held that the charge under Section 354 IPC, in such facts of the case, cannot be quashed under Section 482 of the Cr. P.C. This petition is filed before commencement of examination of evidence. It is well-settled that all the three petitioners belong to a common political outfit. The quarrel appears to have taken place on a heat of the moment and it is amicably settled now, as they have entered into a compromise. Thus, I am of the considered view that the petition deserves to be allowed.

16. Resultantly, FIR bearing No. 333 of 2016 dated 22nd September 2016 and the consequential proceedings in GR Case No. 228 of 2017 (State of Sikkim Versus Prem Singh Tamang) pending on the file of the Court of Judicial Magistrate (First Class), Soreng Sub-Division, West Sikkim stationed at Gangtok, are quashed.

17. Thus, this petition is allowed. No order as to costs.

Chief Justice
11.04.2018

jk Approved for Reporting : Yes/No.
Internet : Yes/No.