

**THE HIGH COURT OF SIKKIM : GANGTOK**  
**(Criminal Appeal Jurisdiction)**

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**S.B.- BHASKAR RAJ PRADHAN, JUDGE.**  
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**Crl. Misc Case No. 10 of 2017**

Thinlay Dorjee & Ors.

.... Petitioners.

*versus*

State of Sikkim

.... Respondent.

**An Application under Section 482 of the Code of Criminal  
Procedure, 1973.**

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**Appearance:**

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Aruna Chhetri and Ms. Hemlata Sharma, Advocates for the Petitioners.

Mr. Karma Thinlay, Senior Government Advocate with Mr. S.K Chettri and Ms. Pollin Rai, Asstt. Government Advocates for the State-Respondent.

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**ORDER**  
(01.09.2017)

**Bhaskar Raj Pradhan, J.**

Crl. Misc. Case No.10 of 2017 has been preferred seeking to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The petitioners are the accused, the complainant and the victim respectively. The State of Sikkim is the respondent. The petitioners prays that FIR No. 29 of 2016 dated 03.06.2016 and its subsequent proceedings i.e., G.R. Case No. 24 of 2016 (State of Sikkim v. Shri Thinlay Dorjee) be quashed in terms of the deed of compromise dated 11.06.2016 entered between one Krishna Chettri, petitioner No. 2/ complainant and Thinlay Dorjee,

petitioner No. 1/accused in the above mentioned Criminal Misc. Case on 29.07.2017. The deed of compromise records:

- "1. That the Party of the Second Part on 03.06.2016, on his way back to Bhutan collided with a Scooty bearing Registration No. WB 74 AF 6438, wherein one Mr. Hari Chhetri, S/o Late B. B. Chhetri (Rider of the said Scooty) and the pillon rider Mr. Ram Bahadur Chhetri, S/o Late H. B. Chhetri got injured. Accordingly the Party of the First Part being the brother of the injured persons lodged a complaint before the Singtam Police Station and on the basis of the same a FIR was registered against the Party of the Second part vide FIR No. 29/2016, dated 03.06.2016, dated 03.06.2016 under Section 279/237/238 of the Indian Penal Code, 1860 read with Section 177/184 of the Central Motor Vehicle Act, 1988.*
- 2. That the Party of the Second Part assisted by the other persons of the locality took the injured persons to the hospital wherein the injured Mr. Hari Chhetri was admitted to Singtam District Hospital and later on referred to Mohapal Nursing Home, Pradhan Nagar, Siliguri, whereas the Pillion Rider Mr. Ram Bahadur Chhetri having suffered simple injuries was returned back after through medical examination, expenses of same was incurred by the party of the Second Part.*
- 3. That the parties having been agreed to settle their disputes and differences amicably between themselves without recourse to litigation and for that purpose showing their willingness to abandon their claims met at Singtam, East Sikkim for compromising the matter on 08.06.2016.*
- 4. That it has been settled and compromised by the parties herein that the Party of the Second Part shall pay a lumpsum amount for the damages of the Scooty i.e. Rs.60,000/- (Rupees Sixty Thousand only), compensation to injured No.1 Mr. Hari Chhetri i.e. Rs. 1.00,000/- (Rupees One Lac only) and Expenses for medical treatment to the injured No.2. Mr. Ram Bahadur Chhetri i.e. Rs.10,000/- as a full and final settlement to the claims of the party of the First Part.*  
*Therefore, it was settled in a lumpsum amount of Rs.1,70,000/- (One Lac Seventy Thousand only) to be paid by the Party of the Second Part as a full and final settlement to the Complainant (i.e. party of the First Part) in connection to FIR No.29/2016 dated 03.06.2016.*

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5. *That the party of the Second Part has already paid a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the party of the Second Part as an advance to the aforesaid lumpsum amount and receipt of the same has been duly acknowledged by the Party of the First Part in presence of two attesting witnesses.*
6. *That the Party of the Second Part shall pay the remaining amount of Rs.1,20,000/- (Rupees One Lac Twenty Thousand only) to the Party of the First Part on 11.06.2016 and the Party of the First Part shall acknowledge the receipt of the same as full and final settlement and in future the party of the First Part shall have no claim against the Party of the Second Part.*
7. *That after execution of this deed of compromise and after receipt of the full and final payment of the compensation amount, the Party of the First part has agreed to withdraw the Complaint filed by him on 03.06.2016 followed by FIR No.29/2016 dated 03.06.2016 under Section 279/237/238 of the Indian Penal Code, 1860 read with Section 177/184 of the Central Motor Vehicle Act, 1988."*

**2.** During the proceedings an application was filed by the petitioners placing on record a declaration of the parties dated 28.07.2017 in respect of the deed of compromise dated 11.06.2016 which was allowed. This application was filed by all the petitioners herein supported by a joint affidavit. Declaration of the parties in respect of the deed of compromise dated 11.06.2016 is signed by Hari Chettri, victim/petitioner No.3, complainant/petitioner No.2 and accused/petitioner No.1. The said declaration records that the total compensation amount of Rs.1,70,000/- (One Lakh Seventy Thousand only) has been paid to the complainant/petitioner No.2 to be paid to the victim/petitioner No.3 on 11.06.2016 as the victim/petitioner No.3 was at that time undergoing treatment. It also declares that it has been agreed between the parties that no future claims shall be made by the victim/petitioner No.3 and the complainant/petitioner No.2 against the accused/petitioner No.1 arising out of the said accident.

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The declaration also records the acknowledgment of the receipt of the entire compensation amount of Rs.1,70,000/- by the victim/petitioner No.3.

**3.** FIR No. 29 of 2016 was registered on 03.06.2016 under Section 279, 237, 238 of the Indian Penal Code, 1860 (IPC) read with Section 177/184 of the Motor Vehicles Act, 1988. The FIR was lodged by complainant/petitioner No. 2 stating that around 4.20 p.m. on 03.06.2016 his sister-in-law, Uma Chettri, telephonically informed him that his brother victim /petitioner No.3 while going from Rangpo to Singtam in a scooty bearing No.WB 74 AF 6438 was hit by a vehicle No. BP-1B4867 and was grievously injured.

**4.** On the basis of the said FIR the investigation culminated in filing of a final report under Section 173 Cr.P.C. by which the accused /petitioner No. 1 was charge-sheeted under Section 279/338 IPC read with Section 177/181/184 Motor Vehicles Act, 1988.

**5.** On 22.03.2017 the Learned Chief Judicial Magistrate pronounced a notice of accusation to the accused/ petitioner No.1 under Section 279, 338 IPC and Section 184 of the Motor Vehicles Act, 1988.

**6.** The accused/petitioner No.1 did not plead guilty to the notice of accusation, pursuant thereto, the case was put to trial and summons issued to the prosecution witnesses. It was at this stage that on 30.05.2017 the present Criminal Misc. Case No. 10 of 2017 was filed before this Court.

**7.** I have heard Mr. A. K. Upadhyaya, Learned Senior Advocate, appearing for the petitioners as well as Mr. Karma Thinlay Namgyal, Learned Senior Advocate and Additional Public Prosecutor appearing for the State of Sikkim. Mr. A. K. Upadhyaya, would submit that this was a fit case for the exercise of the inherent powers of this Court and relied upon **(1). Narinder Singh & Ors. v. State of Punjab & Anr<sup>1</sup>. (2) Gian Singh v. State of Punjab & Anr<sup>2</sup>. (3) Manoj Subba & Ors v. State of Sikkim<sup>3</sup> (4) Mohan Singh (Dead) by LRS v. Devi Charan & Ors<sup>4</sup>**. Mr. Karma Thinlay Namgyal, would submit that in view of the compromise entered between the affected parties and keeping in mind the ratio of the judgment of the Apex Court in re: **Gian Singh v. State of Punjab (supra)** it was a fit case in which this Court should exercise its inherent powers under Section 482 Cr.P.C. to quash the criminal proceeding and the State would not have any objection.

**8.** The relevant Sections of the IPC provides:-

*"279. Rash driving or riding on a public way.- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*

*"338. Causing grievous hurt by act endangering life or personal safety of others.-Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."*

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<sup>1</sup> (2014) 6 SCC 466

<sup>2</sup> (2012) 10 SCC 303

<sup>3</sup> Order dated 21.09.2016 in Crl. M.C. No. 19 of 2016

<sup>4</sup> (1988) 3 SCC 63

**9.** Section 184 of the Motor Vehicles Act, 1988 provides:-

**"184. Driving dangerously.**-Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

**10.** Section 320 of the Cr.P.C. provides which of the offences under the IPC are compoundable and the persons by whom such offences may be compounded.

**11.** Section 279 of IPC is a non-compoundable offence.

**12.** Section 338 IPC is an offence which is compoundable by a person to whom hurt is caused. The petitioner No. 3 being the victim and the person who was hurt can compound it. By the compromise deed read with the declaration of the parties the offence under Section 338 IPC stands compounded. The accused/petitioner No. 1 would stand acquitted for the offence under Section 338 IPC.

**13.** Section 200 of the Motor Vehicles Act, 1988 provides:

**"200. Composition of certain offences.**-(1) Any offence whether committed before or after the commencement of this Act punishable under Section 177, Section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186 [section 189, sub-section (2) of section 190], section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf."

**14.** Section 184 of the Motor Vehicles Act, 1988 is therefore compoundable by such officers or authorities and for such amount as the State Government may by Notification in the Official Gazette.

**15.** The Government of Sikkim vide Notification No. 1633/MV/S dated 21<sup>st</sup> Feb. 1995 published in Sikkim Government Gazette No.79 dated 27<sup>th</sup> April 1995 has specified such officers under Schedule I who are authorised to compound the specific offences as provided under Section 200 of the Motor Vehicles Act, 1988 as well as the amount of fine thereto under Schedule II.

**16.** Section 200 of the Motor Vehicles Act, 1988 read with vide Notification No. 1633/MV/S dated 21<sup>st</sup> Feb. 1995 makes it clear that Section 184 of the Motor Vehicles Act, 1988 is compoundable by the Officers as specified in Schedule I of the said Notification on payment of the amount of fine as provided in Schedule II.

**17.** The petitioner No.1, pursuant to a query raised by this Court on 25.08.2017, has approached the authorised officer in terms of Notification No. 1633/MV/S dated 21<sup>st</sup> Feb. 1995, paid the amount specified under Schedule II thereof and vide receipt No.776 dated 28.08.2017 an amount of Rs.1,000/- (Rupees one thousand) only has been acknowledged by the compounding officer under Section 184 of the Motor Vehicles Act, 1988. The said receipt has been filed with an application dated 31.08.2017 filed by the Sub Divisional Police Officer, Gangtok. Accordingly the said offence under Section 184 of the Motor Vehicles Act, 1988 also stands compounded. Resultantly the

accused/petitioner No. 1 would stand acquitted for the offence under Section 338 IPC also.

**18.** The Apex Court in re: **Puttaswamy v. State of Karnataka and Anr.**<sup>5</sup> while examining a case where the appellant therein had been convicted under Section 279 and 304-A IPC for causing death of a small girl due to his rash and negligent driving took note of the settlement between the parties at the admission stage of the appeal before it and held that from the various decisions of the Apex Court it is clear that even if the offence is not compoundable within the scope of Section 320 of the Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction. This was not a case of exercise of inherent powers of the High Court under Section 482 of Cr.P.C.

**19.** In re: **Manish Jalan v. State of Karnataka**<sup>6</sup> the Apex Court while examining yet another case of conviction under Section 279 and 304-A IPC and upheld by the High Court, where the appellant therein had dashed against a Kinetic Honda Scooter, being driven by the deceased, who fell down and was run over by the left wheel of the tanker would hold that the offence under Section 279 IPC is not compoundable. Even while holding so the Apex Court would take note of the fact that it was a case of rash and negligent act simpliciter and not a case of driving in an inebriated condition and considering that the mother of the victim had no grievance against the appellant therein a lenient view was taken. The sentence of imprisonment was reduced to the period already undergone and in addition thereto the appellant

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<sup>5</sup> (2009) 1 SCC 711

<sup>6</sup> (2008) 8 SCC 225

therein was directed to pay an amount of Rs 1,00,000 to the mother of the deceased by way of compensation. This was also not a case of exercise of inherent powers of the High Court under Section 482 of Cr.P.C.

**20.** In re: ***Narinder Singh & Ors. v. State of Punjab (supra)*** the Apex Court while examining the powers under Section 482 of Cr.P.C. for quashing and offence alleged under Section 307 IPC would lay down detailed guidelines for High Courts to form a view under what circumstances it would accept the settlement between the parties and quash the proceedings and when it should refrain from doing so. In paragraph 29 of the said judgment the guidelines would read thus:-

*"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*

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*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."*

**21.** In re: **Gian Singh vs. State of Punjab (supra)** while answering the reference with regard to the inherent power of the High Court under Section 482 Cr.P.C. in quashing Criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 Cr.P.C. the Apex Court would hold:-

*"51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The Revisional Court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner."*

*"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code."*

*"53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of*

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*justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code."*

**"54.** *In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non."*

**"55.** *In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection."*

**"56.** *It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided."*

**"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 ends 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 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. No doubt, crimes are acts which have harmful effect on*

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*the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of 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, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."*

**"59.***B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] , Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] , Manoj Sharma [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and Shiji [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] , Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] , Manoj Sharma [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and Shiji [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment."*

**"60.***We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia [(1990) 2 SCC 437 : 1990 SCC (Cri) 327] , Dharampal [(1993) 1 SCC 435 : 1993 SCC (Cri) 333 : 1993 Cri LJ 1049] , Arun Shankar Shukla [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554] , Ishwar Singh [(2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] , Rumi Dhar [(2009) 6 SCC 364 : (2009) 2 SCC (Cri) 1074] and Ashok Sadarangani [(2012) 11 SCC 321] . The principle propounded in Simrikhia [(1990) 2 SCC 437 : 1990 SCC (Cri) 327] that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal [(1993) 1 SCC 435 : 1993 SCC (Cri) 333 : 1993 Cri LJ 1049] the Court observed the same thing that the inherent powers*

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*under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554] . In Ishwar Singh [(2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] the accused was alleged to have committed an offence punishable under Section 307 IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar [(2009) 6 SCC 364 : (2009) 2 SCC (Cri) 1074] although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for the commission of the offences under Sections 120-B/420/467/468/471 IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani [(2012) 11 SCC 321] was again a case where the accused persons were charged of having committed the offences under Sections 120-B, 465, 467, 468 and 471 IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilised such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] , Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] and Manoj Sharma [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and it was held that B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani [(2012) 11 SCC 321] was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani [(2012) 11 SCC 321] supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing."*

**"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,*

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*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."*

**22.** A perusal of the notice of accusations dated 22.03.2017 framed by the Learned Chief Judicial Magistrate makes it evident that the offences under Section 279/338 of the IPC and Section 184 of the Motor Vehicle Act, 1988 pertains to the same occurrence. As per the accusations the accused/petitioner No.1 was driving an SUV vehicle on 03.06.2016 in speed so rash and negligent that it hit the Scooty driven on the road causing grievous hurt to the rider i.e. the victim/petitioner No.3. The deed of compromise dated 11.06.2016 and the declaration dated 28.07.2017 makes it evident that all issues between the offender and the victim have been amicably settled. The offence under Section 279 IPC is not compoundable. The rest of the offences charged against

the accused/petitioner No.1 are compoundable and have been compounded.

**23.** From the recital of the deed of compromise it is clear that the injured victim/petitioner No.3 was immediately evacuated by the accused/petitioner No.1 with the help of other persons to the Singtam District Hospital and admitted there for treatment and care. Later on the victim/petitioner No.3 was referred to Mohapal Nursing Home, Pradhan Nagar, Siliguri. It is also noticed that the accused/petitioner No.1 has borne the medical expenses of the injured victim/petitioner No.3 for an amount of Rs.1,00,000/- (Rupees One Lakh); expenses for the damages to the Scooty for an amount of Rs.60,000/- (Rupees sixty thousand) and for the medical expenses of one Ram Bahadur Chhetri, the pillion rider who had suffered simple injury. The dispute and differences between the parties have thus been amicably resolved and a total amount of Rs.1,70,000/- (Rupees One Lakh Seventy Thousand) paid as detailed above and the victim/petitioner No.3 has acknowledged the receipt of the same vide declaration dated 28.07.2017.

**24.** It is true that Section 279 IPC is not compoundable under Section 320 Cr.P.C. Rash and negligent driving on a public way, if proved, is an offence which does affect the Society. However it is noticed that there is no allegation against the accused/petitioner No.1 that at the time of accident he was under the influence of liquor or any other substance impairing his driving skills. The allegation put to trial is one of rash and negligent act simplicitor and not a case of driving in an inebriated condition. This Court notices that the allegation in the final report is that the accused/petitioner No.1 stayed back after the

accident, loaded the Scooty in his vehicle with the help of the locals and produced it at the Police Station. There is no allegation that the accused/petitioner No.1 tried to escape after the accident.

**25.** The examination of prosecution witnesses is yet to commence. The main witnesses in the pending criminal proceeding would be the parties to the deed of compromise and the declaration. The accused/petitioner No.1 is a resident of Bhutan and perhaps not a frequent driver in the roads of Sikkim. It is noticed that during the proceedings before this Court the accused/petitioner No.1 was personally present in various dates which is a clear indication that the accused/petitioner No.1 has due regard to the majesty of the Indian Laws.

**26.** Section 279 IPC is not a heinous offence. All dispute and differences being settled amicably and to the complete satisfaction of the victim/petitioner No.3 the continuation of the Criminal proceeding would be an exercise in futility and in such circumstances the possibility of conviction would be remote and bleak. The benevolence of the victim/petitioner No.3 to forgive the accused/petitioner No. 1 who is said to have injured him must also not be lost sight of. It is also noticed that if the trial is to continue the accused/petitioner No. 1 who has shown a great amount of right thinking, reflected in his conduct, post the accident, would be put to unnecessary judicial process. Therefore, not quashing the Criminal proceeding despite full and complete settlement and compromise would not be in the interest of real, complete and substantial justice.

**27.** This Court in re: ***Manoj Subba v. State of Sikkim (supra)*** while exercising its inherent powers under Section 482 of Cr.P.C. would

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quash the FIR registered under Section 279/337/338 of the IPC read with Section 184 and 187 of the Motor Vehicles Act, 1989 and the G.R. Case registered thereafter.

**28.** In the circumstances, this Court is of the view that this is a fit case to exercise the inherent powers of this Court under Section 482 Cr.P.C. to secure the ends of justice. In exercise of the inherent powers of this Court under Section 482 of the Cr.P.C. the FIR No. 29 of 2016 dated 03.06.2016 and its subsequent proceedings i.e. G.R. Case No. 24 of 2016 (State of Sikkim v. Shri Thinlay Dorjee) is quashed.

**29.** Copy of this Order may be sent to the Court of the Learned Chief Judicial Magistrate, East Sikkim at Gangtok for compliance.

**(Bhaskar Raj Pradhan)**  
**Judge**  
01.09.2017

Approved for reporting: yes.  
Internet: yes.