

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

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

Crl. Misc. Case No. 16 of 2017

1. Shri Manoj Darjee,
Son of Shri Krishna Narayan Darjee,
R/o Kazi Road, Gangtok,
P.O. & P.S. Gangtok, East Sikkim.
... Accused/Petitioner No.1

 2. Shri Prakash Gurung,
S/o Shri Sancha Bir Gurung,
Resident of Kazi Road,
P.O. & P.S. Gangtok, East Sikkim.
... Complainant/Petitioner No.2

 3. Shri Neeraj Gurung,
S/o Shri Sancha Bir Gurung,
Resident of Kazi Road,
P.O. & P.S. Gangtok, East Sikkim.
... Victim/Petitioner No.3
- versus**

State of Sikkim
Through The Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

... Respondent

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

Appearance:

Ms. Sedenla Bhutia, Advocate for the Petitioners.

Mr. Karma Thinlay and Mr. Thinlay Dorjee Bhtutia,
Additional Public Prosecutors with Mr. Santosh Kr.
Chettri and Ms. Pollin Rai, Assistant Public
Prosecutors for the State.

ORDER
(22.02.2018)

Satish K. Agnihotri, CJ

The instant petition is filed by the accused, the complainant and the victim, who are arrayed as Petitioners No.1, 2 and 3 respectively, under Section 482 of the Code of Criminal Procedure, 1973, (in short, the Cr.P.C.) seeking to quash the F.I.R. No. 34/2016 dated 01.02.2016 and consequential proceedings emanating therefrom in G. R. Case No. 130 of 2017 (*State of Sikkim -vs- Manoj Darjee*) pending on the file of the Court of Judicial Magistrate at Gangtok.

2. The genesis of filing of the instant petition is that the Third Petitioner was allegedly assaulted in Gangtok by the First Petitioner, consequent thereupon sustained severe injuries on his head. The Second Petitioner, being the brother of the Third Petitioner, filed the F.I.R. on 01.02.2016, stating that the Third Petitioner, his brother was assaulted by the First Petitioner, who stays in Tibet Road, sustaining severe injuries on his head. He was admitted to S.T.N.M. Hospital under critical condition. On investigation, the case was registered as Sessions Trial (S.T.) Case No. 12 of 2017 in the Judicial Service Centre, Gangtok on 02.06.2017.

3. On 16.08.2017, learned Sessions Judge, East Sikkim at Gangtok, on examination of the materials on record, came to the conclusion that the case was triable for an offence under Section 324 of the Indian Penal Code, 1860 (in short, the IPC). Accordingly, the case file was transferred to the Court of the Chief Judicial Magistrate (East) at Gangtok and a charge under Section 324 of the IPC was framed. Thereafter, the case was transferred to the Court of the Judicial Magistrate (First Class) at Gangtok.

4. In the meantime, the accused, i.e. First Petitioner, entered into compromise with the complainant, the Second Petitioner and the victim, the Third Petitioner on 31.10.2017, which was recorded in writing and filed herein. The terms of the Compromise read as under:-

- “1. That the Second Party shall withdraw the F.I.R. dated 01.02.2016 lodged by him before the Sadar P.S.
2. That after the execution of this deed of compromise all the parties shall maintain cordial relations with each other.
3. That all the parties hereto have voluntarily arrived at this compromise without any duress, force, pressure or undue influence from any quarter whatsoever.”

Pursuant thereto, the instant petition is filed by all the parties, as afore-stated, seeking quashing of F.I.R. and Charge Sheet thereafter against the First Petitioner.

5. Ms. Sedenla Bhutia, learned Counsel appearing for the Petitioners, would contend that in the heat of argument as the accused and victim both were inebriated, the First Petitioner assaulted the Third Petitioner without any intention or ill will. They were moving around together, dining and wining together, thus, the injury caused by the First Petitioner to the Third Petitioner was a result of quarrel between them. It is further contended that since the parties have settled their dispute amicably and decided to live peacefully together, the petition may be allowed and the F.I.R. as well as the Charge Sheet be quashed.

6. Referring to the observations made by the Supreme Court in **B.S. Joshi and Others vs. State of Haryana and Another¹**, **Manoj Sharma vs. State and Others²** and **Gian Singh vs. State of Punjab and Another³** and also Order dated 19.05.2017 rendered by this Court in Rajendra Rai and Others vs. State of Sikkim, it is submitted by Ms. Sedenla Bhutia, learned Counsel that this is a fit case to quash the F.I.R. and Charge Sheet in exercise of extra-ordinary discretionary jurisdiction of this Court under Section 482 of the Cr.P.C.

¹ (2003) 4 SCC 675

² (2008) 16 SCC 1

³ (2012) 10 SCC 303

7. Responding, Mr. Karma Thinlay, learned Additional Public Prosecutor, would urge that the case was initially registered as sessions case looking into the injuries sustained by the Third Petitioner. However, on examination, it was noticed that it was a case of an offence under Section 324 of the IPC only. Accordingly, charge was framed and the case is pending on trial.

8. Considering the factual aspects involved in this case and also on examination of the submissions made by the learned Counsel appearing for the parties, it is indisputable that the First Petitioner and the Third Petitioner were friends and dining and wining together. The assault was made in the heat of argument without any ill intention. Subsequently, realizing their mistakes, all the parties have reached to a compromise to live peacefully together. In such facts situation, the issue needs the examination.

9. In ***B.S. Joshi*** (*supra*), it is evidently observed that while exercising inherent power of quashing under Section 482 of the Cr.P.C., it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

10. In the case of **Manoj Sharma** (*supra*), wherein the question involved was as to whether a first information report under Sections 420/468/471/34/120-B IPC deserve to be quashed either under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution, when the accused and the complainant have compromised and settled the matter between themselves. The Supreme Court speaking through Hon'ble Mr. Justice Altamas Kabir (as he then was), observed as under:

"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.
.....”

11. In yet another case, ***Sushil Suri vs. Central Bureau of Investigation & Anr.***⁴, the Supreme Court considered the ambit and scope of Section 482 of the Cr.P.C. and 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 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.”

12. A larger Bench of Supreme Court in ***Gian Singh*** (*supra*), examining the correctness of the decisions of the Supreme Court in ***B. S. Joshi*** (*supra*), ***Nikhil Merchant*** vs.

⁴ (2011) 5 SCC 708

Central Bureau of Investigation & Anr.⁵ and **Manoj Sharma** (*supra*) in reference made in **Gian Singh vs. State of Punjab & Anr.**⁶ settled the proposition of law 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 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.
.....”

13. Subsequently, in **Ashok Sadarangani & Anr.** vs. **Union of India & Ors.**⁷, referring to earlier decision rendered by the Supreme Court, 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

⁵ (2008) 9 SCC 677

⁶ (2010) 15 SCC 118

⁷ (2012) 11 SCC 321

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."

14. In *Yogendra Yadav and others vs. State of Jharkhand and another*⁸, the appellants were charge-sheeted under Sections 341, 323, 324, 504 and 307 read with Section 34 of the IPC. However, having regard to the compromise entered by the complainant and the accused persons, 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.

⁸ (2012) 9 SCC 653

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.”

15. A common thread running through the afore-stated cases is that the High Court is competent enough to exercise its extra-ordinary jurisdiction under Section 482 of the Cr.P.C. to quash the F.I.R., Charge Sheet and consequential criminal proceedings pending in the Trial Court in the particular facts and circumstances of the case, in the interest of social relationship and peace in the society.

16. Resultantly, F.I.R. bearing No. 34/2016 dated 01.02.2016 and consequential proceedings in G. R. Case No. 130 of 2017 (*State of Sikkim -vs- Manoj Darjee*) pending on the file of the Court of Judicial Magistrate at Gangtok, East Sikkim are quashed.

17. Petition is allowed.

Sd/-
Chief Justice
22.02.2018

pm Approved for Reporting : Yes/~~No.~~
Internet : Yes/~~No.~~