Naushey Ali vs State Of U.P on 11 February, 2025

2025 INSC 182 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 660 OF 2025
(@ SLP Criminal No. 3432 of 2023)

Naushey Ali & Ors. …Appellant (s)

Versus

State of U.P. & Anr. ...Respondent(s)

JUDGMENT

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the order dated 19.01.2023 in Application under Section 482 Cr.P.C. No. 1315 of 2023 on the file of the High Court of Judicature at Allahabad. By the said order, the High Court, by holding that a case involving allegation of Commission of offence under Section 307 of the Indian Penal Code, 1860 (for short 'IPC') cannot be compounded, dismissed the application under Section 482 Cr.P.C., seeking quashment of proceedings. Five of the eight appellants before the High Court – Naushey Ali, Khushboo Ali, Khursheed, Raza Ali and Nanhe – are before this Court in Appeal. The other three have passed away.

3. The facts of the case lie in a very narrow compass.

i) The appellants and respondent No.2 Mahmood S/o late Abdul Lateef are residents of the same village - Barwara Khas, District Moradabad, U.P.

ii) With respect to an occurrence on 11.08.1991, it was the appellants' party which first lodged Case Crime No. 248/91 on the said day itself against the respondent No.2, his father and others for offences punishable under Sections 147, 148, 149, 307, 325, 506, 323 and 504 of IPC.

iii) On 27.08.1991, Case Crime No. 248-A/91 was registered by Abdul Lateef, on behalf of respondent No.2, in FIR No. 141 of 1991. The sections, violations of which were alleged were, 147, 148, 149, 307, 325, 506, 323 and 504 IPC.

This FIR was registered against all eight persons, including the appellants.

iv) The gravamen of the allegation was that the appellants' party wanted to pass the irrigation water through the field of the complainant by forcibly digging the land. When it was resisted by the complainant party, the appellants' party abused them in filthy language and assaulted Mahmood S/o Abdul Lateef with lathi and iron bars. When Mahmood ran to save his life, Abdul Waris (since deceased) opened fire from his rifle.

v) According to the complainant, on hearing the sound, Munnan S/o Mangu and Vilayat S/o Inayat came and saved them. Thereafter, they reached the Police Station to lodge a report, when they found that the appellants' party was already present at the Police Station. A complaint was lodged by Mahmood but the thumb impression on his behalf was put by his father Abdul Lateef.

vi) On 07.09.1991, after investigation, the police filed a final report No. 50/91 stating that the complaint was a false complaint. It was recorded that during the course of investigation, from the statements of witnesses, it was found that the case has been falsely registered by the complainant as a counter blast to FIR No. 248/91 lodged by the appellants' party.

vii) However, on 05.09.1992, the police report was rejected by the VIth Additional Chief Judicial Magistrate, Moradabad, who summoned the appellants and the three others - Abdul Waris, Rasheed and Maseeta (all since deceased), for trial, for offences punishable under Sections 147, 148, 149, 307, 324, 325 and 323 of IPC and issued warrants.

viii) Aggrieved, the appellants challenged the order dated 05.09.1992 of the trial Court before the High Court in Criminal Revision No. 1318 of 1992, wherein an interim order was passed staying the order of 05.09.1992.

ix) The criminal revision was ultimately dismissed on 03.04.2015 after it remained pending for nearly twenty-three years. It is the case of the appellants' party that the dismissal of the criminal revision was not known to them till October, 2022, when they received summons from the trial Court.

x) It appears that, in the meantime, due to the intervention of the elderly persons in the village, on 19.12.2022, a compromise was entered into between the injured Mahmood and the appellants.

xi) Based on the compromise and affidavit of the injured Mahmood, the appellant and three others filed application under Section 482 CrPC numbered as Criminal Misc. Application No. 1315 of 2023 before the High Court of Judicature at Allahabad praying for quashment of the entire proceedings in view of the compromise entered into between the parties on 19.12.2022.

xii) It has also come on record that Case No. 248 of 1991 lodged on 11.08.1991 by the appellants' party was settled during the lifetime of Abdul Waris. There is no dispute that the said case is not pending.

xiii) However, vide the impugned order, on the ground that the matter related to an offence under Section 307 IPC in which there are injuries and a fracture of the head of distal phalanx of left ring

finger received by R-2 Mahmood, the High Court held that the matter cannot be compounded. The relevant part of the judgment of the High Court is set out herein below:-

> "Although it is a common ground between both the learned counsels that parties have entered into compromise and have settled their dispute outside the Court. The said compromise has been filed by separate affidavits and has also been filed by the injured. Copy of which is Annexure-8 to the affidavit but since the matter relates to offence under Section 307 IPC in which there are injuries and even fracture of head of distal phalanx of left ring finger received by Mehboob Ali and looking to the settled law with regard to compounding of offence, the matter cannot be compounded" (Emphasis supplied)
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> xiv) Aggrieved, five of the eight petitioners before the High Court are in appeal before us. Three others have passed away.

4. We have heard Mr. Anupam Mishra, learned counsel for the appellants, Ms. Garima Prashad, learned Senior Advocate and AAG for the respondent No.1-State of U.P. and Mr. Harikumar V., learned counsel for respondent No.2- Mahmood. We have also perused the records of the case as well as the written submissions filed by the appellants.

5. The only question that arises for consideration is: Is the present case a fit case where proceeding could be quashed, particularly when Section 307 IPC has inter alia been invoked in the summons?

6. At the outset, we want to set right the error that occurs in the short order of the High Court. The High Court has not appreciated the difference between compounding of an offence and quashment of proceedings. As explained in Gian Singh vs. State of Punjab and Another, (2012) 10 SCC 303, 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. This Court, highlighting the difference, had the following to say:-

> "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 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." (Emphasis supplied)

7. As would be additionally clear from a close reading of the above two paragraphs, even though compounding and quashing are conceptually different, this Court was careful in pointing out that merely because there is a settlement, for certain categories of offences proceedings will not be quashed. This is on the premise that crimes that have harmful effects on the public and consist of wrongdoing that seriously endangers and threatens the well-being of the society cannot be quashed, only because the accused and the victim have amicably settled the matter.

8. Coming to the facts, notwithstanding the fact that the High Court has mixed up the concepts of compounding and powers of quashment, still the case needs to be considered from the point of view of Section 482.

9. Will the mere mention of Section 307 IPC in the criminal proceedings force the court to adopt a hands-off approach, when parties come forward with a settlement? In that event, what should be the duty of the court and what are the tests to be applied to decide in which cases settlements would be accepted and in which cases it would not be?

10. In State of Madhya Pradesh vs. Laxmi Narayan and Others, (2019) 5 SCC 688, after discussing the ratio in Narinder Singh and Others vs. State of Punjab and Another, (2014) 6 SCC 466 and other

judgments, this Court held:-

> "15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:
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> 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;
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> 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;
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> 15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;
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> 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/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in Narinder Singh should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;
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> 15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature

> and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc." (Emphasis supplied)

11. Before we apply this judgment to the facts, it will be worthwhile to recall the observations of Sikri, J. in Narinder Singh (supra):-

> "26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. ..." (Emphasis supplied)

12. Coming back to Laxmi Narayan (supra), this Court has held that mere mention of Section 307 IPC in the FIR or the charge-sheet should not be the basis for adopting a hands-off approach. It has further held that it would be open for the court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or whether there is evidence to back it. It has been held that the courts may go by the nature of injuries sustained; as to whether the injuries are inflicted on the vital/ delicate parts of the body and the nature of weapon used. It has also been clarified that such an exercise would be permissible after investigation and filing of chargesheet/framing of charges or during the trial. [See 15.4 of Laxmi Narayan (supra)].

13. Coming to the facts of the case, admittedly, there is a settlement between the parties. The case filed by the appellants' party which was prior in point of time and that too on the same day of occurrence, has been settled.

14. It should be recalled that, at the outset, after investigation, the police actually closed the case in its final report of 07.09.1991. It was the trial Court, which by its order of 05.09.1992, refused to accept the same and summoned the appellants. The incident is of 11.08.1991, i.e. about 33½ years back. No doubt, there is a reference to the firing in the FIR but admittedly there was no injury. The allegation is that firing was done by Abdul Waris. He is since deceased. The facts, assuming to be true, also do not make out a case of common object for the appellants under Section 149 IPC insofar as the offence of Section 307 is concerned.

15. The role attributed to the seven members, including the five appellants is not specific. General allegation was that they abused in filthy language and assaulted Mahmood with lathi and iron bars. The specific individual role was only attributed to Adbul Waris, who is since deceased.

16. In any event, the police who investigated disbelieved the entire story. No recoveries have been made of any pellets. What engaged the attention of the High Court was only the fracture of the head

of the distal phalanx of left finger of respondent No.2.

17. We have seen the injuries sustained by Mahmood (R-2) from the medical evidence collected. From the injury report, it is clear that while the first four injuries were contusions and abrasions, injury Nos. 5, 6 and 7 pertained to incised lacerated wound and swelling on the middle finger of the left hand. We have also seen the x-ray report which shows that in the left hand there was a fracture of the head of distal phalanx of left ring finger. Assuming that this was the result of injury with lathis or iron bar, applying the test in Laxmi Narayan (supra), considering the injury and the nature of the weapon used, certainly no offence under Section 307 IPC is made out.

18. Section 307 of IPC reads as under:-

> "307. Attempt to murder.— Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

19. Keeping in mind the surrounding circumstances, the nature of the weapon and the nature of the injury, on facts, we are inclined to conclude that the overt act attributed to the appellants does not bring the case within the four corners of the Section 307 of IPC, either on a stand-alone basis or as held above with the aid of Section 149 of IPC.

20. We are also inclined to conclude that considering the overall circumstances, the nature of the weapon and the nature of the injury (fracture of the head of distal phalanx of left ring finger), the offence alleged, on facts, does not fall in that category of cases where the court should deny relief in the event of a settlement. At the highest, the offence alleged could be one under Section 326 of IPC. It could not be said, on facts, considering all the circumstances that this is a crime which has such an harmful effect on the public and that it has the effect of seriously threatening the well-being of the society. We make it clear that we are saying so on the facts of the present case. We are also firmly of the opinion that proceeding with the trial, when parties have amicably resolved the dispute in the present case, would be futile and the ends of justice require that the settlement be given effect to by quashing the proceedings. It would be a grave abuse of process to let this trial remain pending under the above circumstances, particularly when the dispute is settled and resolved.

21. It should also be borne in mind that this was a case which resulted in a closure report from the side of the police. The State has also before us, after placing the law, fairly left it to the court to take a decision.

22. In Ramgopal v. State of M.P, (2022) 14 SCC 531, Surya Kant, J. speaking for this court, in a case involving a charge under Section 326 IPC, while annulling the proceedings, felicitously set out the

statement of law and applied it to the facts of the said case as under:

> "19. We thus sum up and hold that as opposed to Section 320 CrPC where the Court is squarely guided by the compromise between the parties in respect of offences "compoundable" within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 CrPC or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 CrPC. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind:
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> 19.1. Nature and effect of the offence on the conscience of the society;
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> 19.2. Seriousness of the injury, if any;
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> 19.3 Voluntary nature of compromise between the accused and the victim; and 19.4 Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.
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> 20. Having appraised the aforestated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us, we are inclined to invoke powers under Article 142 and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that:
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> 20.1. Firstly, the occurrence(s) involved in these appeals can be categorised as purely personal or having overtones of criminal proceedings of private nature.
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> 20.2. Secondly, the nature of injuries incurred, for which the appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest.
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> 20.3. Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the appellants had been concluded or their appeal(s) against conviction stand dismissed.
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> 20.4. Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s).
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> 20.5. Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties.

> 20.6. Sixthly, since the appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any ill will and have no vengeance against each other.
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> 20.7. Seventhly, the cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the appellants;

more so looking at their present age."

23. Considering the special features of the case and taking the settlement on record and applying the law, we find that this is a fit case where proceedings in complaint case No. 8023 of 2015 arising out of Case Crime No. 248 of 1991 pending in the Court of Additional Chief Judicial Magistrate, Court No.5, Moradabad should be quashed.

24. In view of the above, we allow the Appeal. The order of the High Court in application under Section 482 Cr.P.C. No. 1315 of 2023 dated 19.01.2023 shall stand set aside and proceeding in Complaint Case No. 8023 of 2015 arising out of Case Crime No. 248 of 1991 pending in the Court of Additional Chief Judicial Magistrate, Court No. 5, Moradabad shall stand quashed.

.....J. (K.V. Viswanathan) .....J. (S.V. N. Bhatti) New Delhi;

11th February, 2025.