State Of M.P vs Deepak & Ors on 10 September, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3747, 2014 AIR SCW 5172, AIR 2014 SC (CRIMINAL) 2083, 2014 CRILR(SC MAH GUJ) 954, (2014) 143 ALLINDCAS 162 (SC), (2015) 1 MH LJ (CRI) 707, 2015 (1) SCC (CRI) 89, (2014) 4 CURCRIR 140, (2014) 59 OCR 599, 2014 CRILR(SC&MP) 954, 2014 (10) SCC 285, (2014) 3 UC 1919, (2014) 4 CRIMES 167, (2014) 4 ALLCRILR 769, (2014) 3 CRILR(RAJ) 954, (2014) 87 ALLCRIC 627, (2014) 3 ALLCRIR 3189, (2015) 1 RAJ LW 697, 2014 (10) SCALE 427, (2014) 10 SCALE 427, (2014) 4 RECCRIR 202

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Bench: A.K. Sikri, J. Chelameswar

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1985 OF 2014
[Arising Out of Special Leave Petition (Criminal) No. 9854 of 2013]

STATE OF MADHYA PRADESH	.....APPELLANT(S)	
VERSUS		
DEEPAK & ORS.	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

As counsel for both the parties expressed their willingness to argue the matter finally at this stage, we heard the appeal finally.

This appeal is preferred by the State of Madhya Pradesh against the judgment and order dated 10.5.2013 passed by the High Court in the petition filed by the Respondent Nos. 1 and 2 herein. The said petition was filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") for compounding/quashing of criminal proceedings arising out of Crime No. 171/13

under Section 307/34 of IPC registered at Police Station Kotwali, District Vidisha (M.P.) and consequent criminal proceedings bearing Criminal Case No. 582 of 2013 pending before the Chief Judicial Magistrate, Vidisha. The FIR was registered at the instance of Respondent No. 3 (hereinafter referred to as the complainant).

The complainant (respondent No.3), Deepak Ghenghat s/o Laxminarayan Ghenghat, had alleged that on 11.3.2013 at about 9.45 p.m., while he was going to Baraipura Chauraha for buying Gutkha for his mother, Deepak Nahariya and Mukesh Nahariya (respondent Nos.1 and 2) met him near Sweepar Mohalla, Gali No. 1. On being asked by respondent No.1, in an abusive language, as to where he was proceeded to, the complainant protested against the use of such foul language. At this, respondent No.1 took out the sword which he was carrying and with an intention to kill the complainant, he inflicted a blow on his forehead by shouting 'you have lodged the report against my elder brother, today I will kill you'. Respondent No.1, thereafter, inflicted blows above the ear on the back side of the head and on the left arm. When the complainant informed that he would lodge a report with the Police, respondent No.2 caught hold of him and threatened that if he lodges the report, then he would not let the complainant reside in the Mohalla. By that time, brother of the complainant Suraj and one Preeti reached the spot and rescued the complainant.

On the same date, the complainant lodged F.I.R. No. 171 of 2013 at Police Station Kotwali, Vidisha (M.P.) for the offence punishable under Sections 307 of I.P.C. read with Section 34 of I.P.C. which triggered the criminal investigation and complainant Deepak Ghenghat was sent for medical examination. Thereafter, on 12.3.2013 police reached on the spot and prepared the spot map, recorded the statement of the witnesses under Section 161, arrested the accused persons and seized certain articles.

On 14.4.2013, articles which were seized were sent for forensic examination. After due and proper investigation charge sheet was filed on 6.4.2013 for the offences punishable under Sections 307 of IPC read with Section 34 of IPC. The respondent filed Misc. Criminal Case No. 3527 of 2013 before the High Court of Madhya Pradesh, Bench at Gwalior under Section 482 of Cr. PC for quashing the criminal proceedings, arising out of the F.I.R. No. 171/2013 against the respondent on the basis of compromise, registered on 11.3.2013 under Sections 307 of IPC read with Section 34 of IPC.

The High Court has accepted the said compromise after taking note of the submissions made before it at the Bar, and the fact that the complainant had also submitted that he did not wish to prosecute the accused persons as he had settled all the disputes amicably with them. For quashing the proceedings, the High Court has referred to the judgment of this Court in Shiji @ Pappu & Ors. v. Radhika & Anr. ; 2011 (10) SCC 705.

Aggrieved by the aforesaid order, the State is before us in the present appeal. It is primarily submitted by the learned counsel for the State that the judgment in the case of Shiji @ Pappu & Ors. (supra) is not applicable to the facts of the present case inasmuch as the incident in question had its genesis and origin in a civil dispute between the parties and having regard to the same the Court had accepted the settlement and quashed the proceedings when it found that parties had resolved the said dispute between them. It was pleaded that on the contrary, in the present case accused persons

are habitual offenders and they had threatened the complainant and extracted the compromise which was not voluntary. The learned counsel also referred to the injuries suffered by the complainant which are described in the report as a result of the medical examination carried out on the person of the complainant immediately after the incident. He pleaded that the offence under Section 307 of IPC was, prima facie, made out and for such a heinous crime the High Court should not have exercised its discretion under Section 482 of the Cr. PC and quashed the proceedings as the offence in question was non-compoundable under Section 320 of the Code.

The learned counsel for the accused on the other hand submitted that since the parties had settled the matter, the High Court had rightly accepted the compromise between the parties. This action of the High Court was justified as parties had buried the hatchet and wanted to leave peacefully. He thus, pleaded that this Court should not interfere with the aforesaid exercise of discretion by the High Court.

After examining the facts of this case and the medical record, we are of the opinion that it was not a case where High Court should have quashed the proceedings in exercise of its discretion under Section 482 of the Code. We may, at the outset, refer to the judgment of this Court in Gulabdas & Ors. v. State of M.P.; 2011 (12) SCALE 625 wherein following view was taken:-

> "7. In the light of the submissions made at the bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived at between the parties. Our answer is in the negative. This Court has in a long line of decisions ruled that offences which are not compoundable under Section 320 of the Code of Criminal Procedure cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in Ram Lal & Anr. v. State of J&K; (1999) 2 SCC 213 and Ishwar Singh v. State of Madhya Pradesh; (2008) 15 SCC 667. We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which Appellant Nos 2 & 3 stand convicted".

A similar situation, as in the present case, was found to have arisen in the case of State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149. In that case also, the High Court had accepted the settlement between the parties in an offence under Section 307 read with Section 34 IPC and set the accused at large by acquitting them. The settlement was arrived at during the pendency of appeal before the High Court against the order of conviction and sentence of the Sessions Judge holding the accused persons guilty of the offence under Sections 307/34 IPC. Some earlier cases of compounding of offence under Section 307 IPC were taken note of, noticing that under certain circumstances, the Court had approved the compounding whereas in certain other cases such a course of action was not accepted. In that case, this Court took the view that the High Court was not justified in accepting the compromise and setting aside the conviction. While doing so, following discussion ensued:

> "12. We find in this case, such a situation does not arise. In the instant case, the incident had occurred on 30-10-2008. The trial court held that the accused persons,

with common intention, went to the shop the injured Abdul Rashid on that day armed with iron rod and a strip of iron and, in furtherance of their common intention, had caused serious injuries on the body of Abdul Rashid, of which Injury 4 was on his head, which was of a serious nature.

13. Dr Rakesh Sharma, PW 5, had stated that out of the injuries caused to Abdul Rashid, Injury 4 was an injury on the head and that injury was 'grievous and fatal for life'. PW 8, Dr Uday Bhomik, also opined that a grievous injury was caused on the head of Abdul Rashid. Dr Uday conducted the operation on injuries of Abdul Rashid as a neurosurgeon and fully supported the opinion expressed by PW 5 Dr Rakesh Sharma that Injury 4 was 'grievous and fatal for life'.

14. We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years' rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in Gian Singh v. State of Punjab, (2012) 10 SCC 303 and has committed a mistake in taking the view that, the injuries were caused on the body of Abdul Rashid in a fight occurred on the spur in the heat of the moment. It has been categorically held by this Court in Gian Singh that the Court, while exercising the power under Section 482 CrPC, must have 'due regard to the nature and gravity of the crime' and 'the societal impact'. Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against 'an individual', rather than against 'the society at large'.

15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, is because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant just to protect the individual but the society as a whole. The High Court was not right in thinking that it was only an injury to the person and since the accused persons (sic victims) had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is, safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by [pic]anyone and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful coexistence and welfare of the society at large." (emphasis supplied) We would like to mention at this stage that in some

> cases offences under Section 307 IPC are allowed to be compounded, whereas in some other cases it is held to be contrary. This dichotomy was taken note of by referring to those judgments, in the case of Narinder Singh & Ors. v. State of Punjab & Anr., (2014) 6 SCC 466, and by reconciling those judgments, situations and circumstances were discerned where compounding is to be allowed or refused. To put it simply, it was pointed out as to under what circumstances the Courts had quashed the proceedings acting upon the settlement arrived at between the parties on the one hand and what were the reasons which had persuaded the Court not to exercise such a discretion.

After thorough and detailed discussion on various facets and after revisiting the entire law on the subject, following principles have culled out in the said decision:

> "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:
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> 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 [pic]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.
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> 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:
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> (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 [pic]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." It is clear from the reading of the passages extracted above, that offence under Section 307 is not treated as a private dispute between the parties inter se but is held to be a crime against the society. Further, guidelines are laid down for the Courts to deal with such matters when application for quashing of proceedings is filed, after the parties have settled the issues between themselves.

When we apply the ratio/principle laid down in the said case to the facts of the present case, we find that the injuries inflicted on the complainant were very serious in nature. The accused was armed with sword and had inflicted blows on the forehead, ear, back side of the head as well as on the left arm of the complainant. The complainant was attacked five times with the sword by the accused person out of which two blows were struck on his head. But for the timely arrival of brother of the complainant and another lady named Preeti, who rescued the complainant, the attacks could have continued. In a case like this, the High Court should not have accepted the petition of the accused under Section 482 of the Code.

As a result of the aforesaid discussion, this appeal is allowed and the order of the High Court is set aside. The concerned Magistrate shall proceed with the trial of the case.

.....J. (J. CHELAMESWAR) .....J. (A.K. SIKRI) New Delhi;

September 10, 2014.