

**Ramji Lal Bairwa & Anr.**

v.

**State of Rajasthan & Ors.**

(Criminal Appeal No. 3403 of 2023)

07 November 2024

**[C.T. Ravikumar\* and Sanjay Kumar, JJ.]**

#### **Issue for Consideration**

Issue arose as regards whether a third party to a criminal proceeding got *locus standi* to challenge the order quashing the FIR lodged against the teacher by the father of the minor victim under the Penal Code, POCSO Act and SC/ST Act, for sexually assaulting the minor girl pursuant thereto based on a compromise arrived at by the parties, in a Special Leave Petition u/Art.136; and whether the power to quash criminal proceedings or FIR in regard to heinous and serious offences having serious impact on society, is exercisable merely because the offender and victim or parents of the victim arrived at a compromise.

#### **Headnotes<sup>†</sup>**

**Constitution of India – Art. 136 – Code of Criminal Procedure, 1973 – s. 482 – Penal Code, 1860 – ss. 354A, 342, 509, and 504 – Protection of Children from Sexual Offences Act, 2012 – ss. 7 and 8 – Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act, 1989 – School teacher sexually assaulted the girl student in the Higher Secondary aged 16 years, by rubbing her breast – FIR lodged against the teacher by the father of the minor victim under Penal Code, POCSO Act and SC/ST Act – Three weeks later the offender and the complainant entered into a compromise, and the teacher filed petition u/s. 482 for quashing the FIR – Thereafter, the High Court quashed the FIR and all further proceedings – Appellant, ordinary men residing in the same District to which the complainant belongs, challenged the order quashing the FIR and all further proceedings u/Art. 32 which was converted into a Special Leave Petition u/Art. 136 – High Court, if has power to quash the proceedings and the FIR in regard to heinous and serious offence having serious impact on society, merely because**

\* Author

**Digital Supreme Court Reports**

**the offender and victim or parents of the victim arrived at a compromise – Third party to a criminal proceeding, if has *locus standi* to challenge the order quashing the FIR and all further proceedings pursuant thereto based on a compromise arrived at by the parties:**

**Held:** Rubbing the breast of a child would constitute an offence of ‘sexual assault’ u/s.7 of POCSO Act – Commission of such offences against the children should be viewed as heinous and serious – Commission of such offences cannot be taken lightly as offences of private nature and in fact, such offences are bound to be taken as offences against the society – Objects and reasons for the enactment of the POCSO Act, show that quashment of proceeding initiated under POCSO Act abruptly by invoking the power u/s.482, without permitting it to mature into a trial, except on extremely compelling reasons, would go against the very intention of the legislature behind the enactment – Power u/s.482 cannot be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society – Without even referring to the alleged offence and thereby without looking into the nature and gravity of the offence, solely relying upon the compromise, impugned order was passed – High Court misread and misapplied the law laid down to quash the FIR and all further proceedings based in pursuance thereof – Statement annexed to the FIR of the complainant itself reveal that the teacher had put pressure on the complainant to restrain him from lodging report, and thereafter, compromise was entered immediately – Despite the said position, the Court did not chose to consider whether the compromise entered into between the parties could be acted upon or not, in the interest of justice, taking note of the serious allegations levelled against the teacher – Right to a third party to prefer petition u/Art.136 is certainly to be recognised and respected in a case where seemingly miscarriage of justice had occurred and still, neither State nor victim or any relative falling under the term ‘victim’ approached this Court – In view of compromise entered into between the parties, chance of conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power u/s.482 – Thus, the impugned order of High Court quashed and set aside. [Paras 12, 20, 25-28, 32, 33]

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.****Case Law Cited**

*Gian Singh v. State of Punjab* [2012] 8 SCR 753 : (2012) 10 SCC 303 – relied on.

*P.S.R. Sadhanantham v. Arunachalam* [1980] 2 SCR 873 : (1980) 3 SCC 141; *Sheonandan Paswan v. State of Bihar and Ors* [1987] 1 SCR 702 : (1987) 1 SCC 288; *Amanullah and Anr. v. State of Bihar* [2016] 2 SCR 1027 : (2016) 6 SCC 699; *V.S Achuthanandan v. R. Balakrishna Pillai* [2011] 2 SCR 762 : (2011) 3 SCC 317; *Rajiv Ranjan Singh 'Lalan' v. Union of India* [2006] Supp. 4 SCR 742 : (2006) 6 SCC 613; *Simranjit Singh Mann v. Union of India* [1992] Supp. 1 SCR 592 : (1992) 4 SCC 653; *Bar Council of Maharashtra v. M.V. Dabholkar* [1976] 1 SCR 306 : (1975) 2 SCC 702; *S.P. Gupta v. Union of India* (1981) Supp. SCC 87; *Attorney General for India v. Satish and Anr* [2021] 10 SCR 955 : (2022) 5 SCC 545; *Ramakant Rai v. Madan Rai and Ors.* [2003] Supp. 4 SCR 17 : (2003) 12 SCC 395; *Arunachalam v. P.S.R. Sadhanantham* [1979] 3 SCR 482 : (1979) 2 SCC 297; *Mohan Lal v. Ajit Singh* [1978] 3 SCR 823 : (1978) 3 SCC 279; *State of M.P. v. Laxmi Narayan* [2019] 2 SCR 864 : (2019) 5 SCC 688; *Sunil Raikwar v. State and Another* (2021) SCC OnLine Del 258 – referred to.

**Books and Periodicals Cited**

Marcus Tullius Cicero (106-43 BC) in 'De Officiis' (on duties) – referred to.

**List of Acts**

Protection of Children from Sexual Offences Act, 2012; Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act, 1989; Penal Code, 1860; Code of Criminal Procedure, 1973.

**List of Keywords**

*Locus standi* of third party to challenge criminal proceeding; Sexually assaulting minor girl; Compromise between the parties; Power to quash criminal proceedings or FIR; Heinous and serious offences; Rubbing the breast of a child; Quashing the FIR; Offence having serious impact on society; *Locus standi*; Offences of private nature; Offences against the society; Objects and reasons for the enactment of the POCSO Act; Right to a third party to prefer petition u/Art.136; Miscarriage of justice.

**Digital Supreme Court Reports****Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3403 of 2023

From the Judgment and Order dated 04.02.2022 of the High Court of Judicature for Rajasthan at Jaipur in SBCRMP No. 1348 of 2022

**Appearances for Parties**

R Basant, Sr. Adv., Amicus Curiae.

Chetan Bairwa, Vikas Jain, Ms. Shrawani Verma, Advs. for the Appellants.

Milind Kumar, Ashutosh Shekhar Paarcha, Ms. Neha Kapoor, Pankaj Singhal, Ms. Ashima Gupta, Sarad Kumar Singhania, Anuj Bhandari, Gaurav Jain, Rajat Gupta, Mrs. Disha Bhandari, Mrs. Anjali Doshi, Aviral Saxena, Manu Krishnan, Jatin Bhatt, Sanawar, Harshit Gahlot, Advs. for the Respondents.

R. H. A. Sikander, Intervener.

**Judgment / Order of the Supreme Court****Judgment**

**C.T. Ravikumar, J.**

1. The renowned American poet H. W. Longfellow penned to the effect that a torn jacket might soon be mended, but a bruised heart of a child would be beyond reviviscence. Certainly, it contains the gospel truth as relates a child subjected to sexual assault, be it aggravated or penetrative; or any kind of sexual abuse or exploitation. It is more so, in the case of a female child as it may hound her and hack her family life.

On pedagogy Marcus Tullius Cicero (106-43 BC) in '*De Officiis*' (on duties) said: "What nobler employment, or more valuable to the State, than that of the man who instructs the rising generation?"

2. May be a jinx on pedagogy unfortunate, unconscionable and unpardonable things happen, though not often-times. The following factual narration will unravel the *raison d'être* for the above prelude: -

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

FIR No.6/2022 dated 08.01.2022 was registered at Sardar Gangapur City Police Station, District Sawai Madhopur, Rajasthan at the instance of the 4<sup>th</sup> respondent, the father of the victim involved in the case, against the 3<sup>rd</sup> respondent herein under Sections 354A, 342, 509 and 504 of the Indian Penal Code, 1860 (for short, '*the IPC*') and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, '*the POCSO Act*') and Sections 3(1)(r), 3(1)(s), 3(1)(b) & 3(2) (vii) of the Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act, 1989 (for short, '*the SC/ST Act*'). The allegations thereunder are to the effect that on 06.01.2022 when the victim child, then a student of Class XI in Higher Secondary School was alone in the classroom, the 3<sup>rd</sup> respondent, who is a teacher, came there. After gazing through the window to ensure that nobody is there near to the classroom, he reached behind her and started patting her cheeks and soon put his hand inside bodice and rubbed her breast. In anguish and anger, she got up and ran away. The accused followed to stop her and hurled abuses with ugly words like '*dedh Chamar*' etc. Thereupon, she sat down near the gate and beseeched the teachers for help, but it was of no avail. They persuaded her to be tight-lipped about the incident. Though, the Principal came to know about it, he only took her signature on a blank paper. Meanwhile, one teacher came to the residence of the 4<sup>th</sup> respondent and took his wife to the school telling that her daughter was not feeling well. On reaching there his wife found the daughter in a deadly terrified and numbed state and she could say nothing to the mother. But, on reaching home, she divulged the incident, to the mother viz., the wife of the 4<sup>th</sup> respondent and she, in turn, informed him on his mobile phone as he was away in another village for employment purpose. On the next day, the 4<sup>th</sup> respondent came back home and the victim narrated the whole incident to him and then, he lodged the aforesaid FIR.

3. Obviously, the subject FIR was filed on 08.01.2022. The third respondent herein compromised the matter with the fourth respondent, who is the father of the victim, on 31.01.2022 and thereupon, moved S.B (Crl.) Misc. Petition No.1348/2022 before the High Court of Rajasthan at Jaipur under Section 482 of the Code of Criminal Procedure, 1973 (for short the '*Cr.P.C.*'), seeking quashment of the said FIR and all further proceedings thereon. As per the impugned order dated 04.02.2022 the High Court, despite the opposition by

**Digital Supreme Court Reports**

the learned public prosecutor, allowed the said petition and quashed the subject FIR and all further proceedings in pursuance thereof. The impugned order would reveal that based on the fact that the 3<sup>rd</sup> respondent has settled the dispute amicably with the 4<sup>th</sup> respondent and relying on the decision of this Court in *Gian Singh v. State of Punjab*,<sup>1</sup> the High Court quashed the FIR and all further proceedings therefrom. The High Court held thus:-

*“...The offence alleged in this matter is non compoundable, however Hon’ble Supreme Court in the case of Gian Singh Vs. State of Punjab [(2012) 10 SCC 303] has propounded that if it is convinced that offences are entirely personal in nature and do not affect the public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, the High Court should not hesitate to quash the same by exercising the inherent powers vested in it. It is observed that in such cases, the prosecution becomes the lame prosecution and pursuing such a lame prosecution would be a waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace. This court is aptly guided by the principles propounded by Hon’ble the Supreme Court and feels that whether dispute is essentially inter se between the parties, either they are relatives, neighbours or having business relationship and which does not affect the society at large, then in such cases, with a view to maintain harmonious relationships between the two sides & for restitution of relationship. and with a view to end-up the dispute in between them permanently, the High Court should exercise its inherent power to quash the FIR and all other subsequent proceedings initiated thereto.”*

4. The appellants state that they are ordinary men residing in the very same Tehsil and District to which the 4<sup>th</sup> respondent belongs. They moved this Court challenging the order quashing the subject FIR and all further proceedings therefrom under Article 32 of the Constitution of India contending that the FIR registered against the 3<sup>rd</sup> respondent

---

1 [2012] 8 SCR 753 : (2012) 10 SCC 303

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

carried serious allegation of commission of acts involving offence(s) under various sections of the IPC, and POCSO Act; that they are not purely private in nature; that they are offences against the society, that the quashment of the subject FIR was solely based on compromise between the third respondent accused and the fourth respondent, the father of the minor victim and that the first respondent State did not choose to challenge the said order dated 04.02.2022 though it was so quashed ignoring the opposition of the public prosecutor. They would further contend that the offences alleged against the 3<sup>rd</sup> respondent were serious offences having impact on the society and letting off the third respondent untried might result in recurrence of such instances besides it being injustice to the victim and society as a whole. On 30.09.2022, this Court issued notice and taking note of the involvement of important issues in the matter, requested Mr. R. Basant, learned Sr. advocate to assist the Court as *amicus curiae*, which request was graciously accepted by the learned counsel. On 13.10.2022, Mr. Aviral Saxena, learned advocate, agreed to assist the learned Senior Counsel. On 02.12.2022, upon hearing the learned counsel appearing for the parties and the learned *amicus curiae* and taking note of difficulty to continue the writ petition filed under Article 32 of the Constitution of India this Court converted the writ petition into Special Leave Petition under Article 136 of the Constitution of India and further ordered thus:-

*“Let the parties address the Court on merits on the next date of hearing. List on 20.01.2023”*

5. The learned counsel appearing respectively for the third and fourth respondents vehemently challenged the *locus standi* of the appellants to challenge the order dated 04.02.2022 passed thereon as they were not parties to the above mentioned Crl. Misc. Petition. Besides challenging the *locus standi* of the appellants they would contend that the quashment of the subject FIR and all further proceedings therefrom is legally permissible in view of the law laid down by this Court in **Gian Singh's** case (*supra*) and the reason for such interference and consequential quashment are specifically mentioned in the impugned order. According to the said respondents the appellants besides being total strangers to the Misc. Petition and are not at all affected by the impugned order. Meanwhile Delhi Commission for Protection of Child Rights (DCPCR) have filed an intervention application seeking permission to assist the Court for proper adjudication of the issues

**Digital Supreme Court Reports**

raised in the Special Leave Petition. Considering the nature of the issues involved and the fact that intervention is sought for by the Commission for Protection for Child Rights we have heard learned counsel for the intervenor, besides the learned *amicus curiae* Sri R. Basant, with the able assistance of Mr. Avival Saxena and the learned counsel for the parties.

6. Considering the conspectus of facts and taking note of the rival contentions, the following twin questions of relevance arise for consideration in this appeal:-
  - (I.) Whether a third party to a criminal proceeding got *locus standi* to challenge the order quashing the FIR concerned and all further proceedings pursuant thereto based on a compromise arrived at by the parties, in a Special Leave Petition under Article 136 of the Constitution of India?
  - (II.) Whether the power to quash criminal proceedings or complaint or FIR in regard to heinous and serious offences having serious impact on society, is exercisable merely because the offender and victim or parent(s) of the victim arrived at a compromise, relying on the dictum laid down by this Court in *Gian Singh's* case (*supra*)?
7. Needless to say, that answers to the above questions would decide the fate of this appeal. For answering the first question, various factors have to be looked into. Necessarily the questions as to whether the offender is accused of commission of offence(s) involving moral turpitude or against the society or whether they are purely of private nature have to be taken note of. As some of the offence(s) alleged fall under special statute relating children, the very object and purpose of the said enactment may also require consideration in the above regard. The learned *amicus curiae* relied on various decisions of this Court to drive home the point that when criminal proceedings are abruptly terminated based on compromise between the offender and the victim or on behalf of the victim by the parent(s), despite the alleged offence being one having impact on the society and of heinous and serious in nature and still, the State did not take up the matter further in accordance with law, ignoring the fact that such quashment of the proceedings was done disregarding the opposition of the public prosecutor, a public spirited person should be having the *locus standi* to challenge such an order in the interest

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

of justice. It is furthermore submitted that in such circumstances if a public-spirited person is non-suited on the ground of *locus standi* it would only help the offender to escape even without facing the trial. Such situations may result in recurrence of commission of such offences detrimental to the interests of the society. To buttress the point that a spirited citizen has the *locus standi* to petition under Article 136 of the Constitution of India to ensure that justice is done, the learned amicus curiae relied on the decisions of this Court in P.S.R. Sadhanantham v. Arunachalam,<sup>2</sup> Sheonandan Paswan v. State of Bihar and Ors.,<sup>3</sup> Amanullah and Anr. v. State of Bihar<sup>4</sup> and V.S Achuthanandan v. R. Balakrishna Pillai.<sup>5</sup> The learned counsel for the intervenor also endorsed the said submissions and contentions made by the learned amicus curiae on the question of *locus standi*.

8. *Per contra*, the learned counsel appearing for the third respondent, who is the accused on whose instance the subject FIR was quashed, contended that it is impermissible for a third party/strangers to interfere in criminal proceedings. In support of the said contention, he relied on various decisions such as Rajiv Ranjan Singh 'Lalan' v. Union of India,<sup>6</sup> Simranjit Singh Mann v. Union of India<sup>7</sup> and Bar Council of Maharashtra v. M.V. Dabholkar.<sup>8</sup>
9. It is disheartening to note that with tooth and nail, the learned counsel appearing for the fourth respondent, the father of the victim, challenged the appellants' *locus standi* to maintain the Special Leave Petition against the impugned order whereunder the FIR registered against the third respondent, the accused was quashed based on the compromise between third and the fourth respondents. It is contended that since none of the fundamental rights under part III of the appellants are infringed, they could not maintain a petition under Article 32 of the Constitution of India and merely because the petition filed by them under Article 32 was converted to one

2 [1980] 2 SCR 873 : (1980) 3 SCC 141

3 [1987] 1 SCR 702 : (1987) 1 SCC 288

4 [2016] 2 SCR 1027 : (2016) 6 SCC 699

5 [2011] 2 SCR 762 : (2011) 3 SCC 317

6 [2006] Supp. 4 SCR 742 : (2006) 6 SCC 613

7 [1992] Supp. 1 SCR 592 : (1992) 4 SCC 653

8 [1976] 1 SCR 306 : (1975) 2 SCC 702

**Digital Supreme Court Reports**

under Article 136, of the Constitution of India, the appellants would not acquire *locus standi* to challenge the order dated 04.02.2022 passed by the High Court in exercise of its power under Section 482, Cr. P.C. The learned counsel relied on the decision of this Court in **S.P. Gupta v. Union of India**<sup>9</sup> in support his contentions.

10. Before dealing with the contentions on behalf of the respondents and also the submissions of the learned amicus curiae and the counsel for the intervenor, we think it only appropriate to refer to certain relevant aspects of the POCSO Act. As introduction to the POCSO Act, what actually actuated the Parliament to enact 'POCSO Act' has been stated thus:-

*"Sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided with nor are they adequately penalised. Such offences against children need to be defined explicitly and countered through adequate penalties as an effective deterrence. This Act provides for protection of children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well-being of children."*

11. Contextually, it is worthy to refer to the statement of objects and reasons for the enactment of the POCSO Act. It reads as follows: -

***"STATEMENT OF OBJECTS AND REASONS***

*Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.*

*2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral*

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

*and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.*

*3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.*

*4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.*

*5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.*

*6. The notes on clauses explain in detail the various provisions contained in the Bill.*

*7. The Bill seeks to achieve the above objectives."*

12. The objects and reasons for the enactment of the POCSO Act, as extracted above, would undoubtedly show that quashment of proceeding initiated under POCSO Act abruptly by invoking the

**Digital Supreme Court Reports**

power under Section 482, Cr. PC without permitting it to mature into a trial, except on extremely compelling reasons *ex facie* malafidely initiated or initiated solely to settle the score etc., would go against the very intention of the legislature behind the enactment. As noted earlier, it is the inadequacy of the existing laws to address certain issues relating sexual offences against the children that made the legislature to come up with the aforesaid legislation with a view to protect and respect the privacy and confidentiality of children and to ensure their physical, emotional, intellectual and social development. The POCSO Act also addressed the lack of provisions defining various offences against the children and also adequate penal provisions therefor. A careful scanning of the various provisions under the POCSO Act would reveal that with a view to achieve the aforesaid objects and purposes various offences against the children are specifically defined and provisions for adequate penalisation are also inserted in the Act. Obviously, rubbing the breast of a child would constitute an offence of 'sexual assault' under Section 7 of POCSO Act, punishable with imprisonment of either description for a term which shall not be less than three years and may extend to five years and also fine. They would reveal that the commission of such offences against the children should be viewed as heinous and serious. Needless to say, that commission of such offences cannot be taken lightly as offences of private nature and in fact, such offences are bound to be taken as offences against the society. In the decision in *Attorney General for India v. Satish and Anr.*<sup>10</sup> at paragraph 38, this Court held thus:-

*"The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7. As held by this Court in Balram Kumawat v. Union of India, the law would have to be interpreted having regard to the subject-matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law."*

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

13. This Court went on to hold that the legislature had incorporated certain statutory presumptions having regard to the seriousness of the offences under the POCSO Act.
14. Bearing in mind the aforesaid aspects we will consider the submissions and contentions made relying on the aforementioned decisions.
15. With respect to the decisions relied on by the learned counsel for the third respondent, it can be seen that they deal with the *locus standi* of a third party to petition under Article 32 of the Constitution of India. But then, this Court has already passed an order on 02.12.2022 converting the petition filed under Article 32 of the Constitution of India as a Special Leave Petition under Article 136 of the Constitution of India and further ordered to list the matter for hearing the parties on merits. Hence, the fact is that the present matter has already shed its character as a petition under Article 32 of the Constitution of India pursuant to the order of this Court on 02.12.2022. The power of this Court to pass such an order cannot be disputed in view of the inherent power in this Court or in view of the power under Article 142 of the Constitution of India. In this context, it is also relevant to refer to Article 136 of Constitution of India and the following decisions of this Court describing the nature of power of this Court under Article 136 of the Constitution of India.

*“Article 136 (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.*

*(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”*

16. In the decision in Kunhayammed and Ors. v. State of Kerala and Anr.,<sup>11</sup> this Court held:-

*“....Article 136 of the Constitution of India is a special jurisdiction conferred on the Supreme Court which is sweeping in its nature. It is a residuary power in the sense*

**Digital Supreme Court Reports**

*that confers an appellate jurisdiction on the Supreme Court subject to the special leave being granted in such matters as may not be covered by the preceding articles. It is an overriding provision conferring a special jurisdiction providing for invoking of the appellate jurisdiction of Supreme Court not fettered by the sweep of preceding articles. Article 136 opens with a non obstante clause and conveys that even in the field covered by the preceding articles, jurisdiction conferred by Article 136 is available to be exercised in an appropriate case. It is untrammelled reservoir of power incapable of being confined to definitional bounds; the discretion being subjected only to one limitation i.e., wisdom and good sense of justice of the judges. No right of appeal is conferred upon any party; only a discretion is vested in the Supreme Court to interfere by granting leave to an applicant to enter in its appellate jurisdiction not open otherwise and as of right.”*

17. In the decision in **Durga Shankar Mehta v. Thakur Raghuraj Singh and others**,<sup>12</sup> this Court in paragraph 5 observed and held thus:-

*“5. .... The powers given by Article 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The article itself is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave, against any kind of judgment or order made by a court or tribunal in any cause or matter and the powers could be exercised in spite of the specific provisions for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this article in any way. ....”*

18. In the said circumstances, the question whether there is any violation of fundamental right(s) under part III of the Constitution of India of the appellants herein need no consideration as it pales into insignificance. According to us, in the said circumstances, while considering the

---

12 [1955] 1 SCR 267 : (1954) 2 SCC 20

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

*locus standi* of the appellants herein to challenge the order dated 04.02.2022 in S.B. CR. M.P. No.1348/2022, what is to be looked into is whether the parameters laid down in P.S.R. Sadhananthan's case (*supra*) and such other relevant decisions are satisfied or not.

19. Now, we will refer to the decisions referred to by the learned *amicus curiae*, in regard to the *locus standi* of the appellants to challenge the order dated 04.02.2022. We have already noted that this Court converted the petition filed under Article 32 by the appellants herein as Special Leave Petition under Article 136 of the Constitution of India and specifically listed to hear the parties on merits. In the aforesaid circumstances, the decision in Ramakant Rai v. Madan Rai and Ors.<sup>13</sup> assumes relevance. That was a case where the acquittal of the convicts, who originally stood convicted by the Trial Court, in an appeal by the High Court was challenged before this Court by a third party to the criminal proceedings (father of the deceased) in a Special Leave Petition. Leave was granted, though he was not a party to the original criminal proceedings under Article 136 of the Constitution of India overruling the objection that a third party to a criminal proceeding could not invoke the power of this Court under Article 136 of the Constitution of India to appeal against an acquittal. This Court considered the power available to this Court under Article 136 of the Constitution of India and held that such a Special Leave Petition is maintainable. It was held that Article 136 of the Constitution of India neither confers on anyone the right to invoke jurisdiction of the Supreme Court nor inhibits anyone from invoking its jurisdiction and that the said power is actually vested in the Supreme Court. It was also held that the exercise of the power under Article 136 by the Supreme Court is circumscribed by any limitation as to 'who may invoke it'. Paragraph 12 of the decision in Ramakant Rai's case is relevant in the contextual situation and it read thus:-

*"12. A doubt has been raised about the competence of a private party as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution of India (in short "the Constitution") against a judgment of acquittal by the High Court. We do not see any substance*

**Digital Supreme Court Reports**

*in the doubt. The appellate power vested in this Court under Article 136 of the Constitution is not to be confused with the ordinary appellate power exercised by appellate courts and Appellate Tribunals under specific statutes. It is a plenary power, “exercisable outside the purview of ordinary law” to meet the pressing demands of justice (See Durga Shankar Mehta v. Raghuraj Singh [AIR 1954 SC 520]). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking the Court’s jurisdiction. The power is vested in this Court but the right to invoke the Court’s jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice, this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court’s jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Criminal Procedure Code, 1973 (in short “the Code”) does not provide for an appeal to the High Court against an order of acquittal by a subordinate court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that in *Mohan Lal v. Ajit Singh* [(1978) 3 SCC 279] this Court interfered with a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, and special leave is not granted as a matter of course but only for good and sufficient reasons, on well-established practice of this Court.*

(Underline supplied)

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

20. The view expressed in paragraph 13 was virtually the view expressed by this Court in Arunachalam v. P.S.R. Sadhanantham<sup>14</sup>, as held in Ramakant Rai's case itself. In Arunachalam's case (*supra*), the acquittal of P.S.R. Sadhanantham and four others by the High Court upon reversing the judgment of their conviction was challenged by the brother of the deceased viz., Arunachalam by filing a Special Leave Petition. Virtually, leave was granted only against the first accused P.S.R. Sadhanantham. Though the *locus standi* of the private party in the sense, one who was not a party to the original criminal proceedings to maintain a Special Leave Petition under Article 136 was raised, this Court, relying on the decision in Mohan Lal v. Ajit Singh,<sup>15</sup> held that this Court could entertain appeal against a judgment of acquittal at the instance of private parties also. Furthermore, it was held that Article 136 of the Constitution of India neither confers on anyone the right to invoke the jurisdiction of the Supreme Court nor inhibits anyone from invoking the Court's jurisdiction and where a judgment of acquittal by the High Court led to a miscarriage of justice, the Supreme Court would not refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We may hasten to add here that the said decisions were rendered prior to the amendment brought to Section 372, Cr. P.C., conferring the victim a right to prefer an appeal against an order passed by a Court acquitting the accused and expanding the scope of the expression "victim" under Section 2 (wa), Cr. P.C. by including his or her guardian or legal heir, vide Act No.5 of 2009 with effect from 31.12.2009 to prefer an appeal against acquittal in the Cr. P.C. That apart, this Court in those decisions specifically held that a private party could prefer an appeal against acquittal invoking the jurisdiction of this Court under Article 136 of the Constitution if the judgment of acquittal led to serious miscarriage of justice. According to us, such right to a third party to prefer a petition under Article 136 of the Constitution is certainly to be recognised and respected in a case where seemingly miscarriage of justice had occurred and still, neither State nor the victim or any relative falling under the term 'victim' approached this Court.

14 [1979] 3 SCR 482 : (1979) 2 SCC 297

15 [1978] 3 SCR 823 : (1978) 3 SCC 279

**Digital Supreme Court Reports**

21. According to us, the case on hand stands on a much firmer footing than those cases. When leave is sought to challenge a judgment of acquittal would undoubtedly reveal the fact that the acquitted was made to face the trial before a Court and acquittal is the outcome of appreciation of evidence by the trial Court concerned.
22. The case on hand is not one where the third party sought leave to challenge a judgment of acquittal. In the case on hand, the very FIR registered against the third respondent for the serious offences, as mentioned above, was quashed by the High Court invoking the power under Section 482, Cr. P.C. solely based on the fact that a compromise was arrived at between the third and the fourth respondents, as mentioned above. It is a fact that the compromise was acted upon despite the opposition of the public prosecutor and even then, the State has not chosen to file petition seeking leave to challenge the order passed by the High Court. Though, the fourth respondent is the father of the victim, who suffered sexual assault and such other offences under the POCSO Act and IPC offences in view of the fact that he had compromised the offences with the third respondent accused, and in view of the manner in which he supports the impugned order, it is evident that he would not invoke the jurisdiction of this Court under Article 136 of the Constitution of India. While considering the *locus standi* of the appellants to challenge the order dated 04.02.2022 the aforesaid aspects are also to be borne in mind. The appellants are ordinary men residing in the very same village to which the fourth respondent belong. There is absolutely no case for the third and fourth respondents that they filed the Special Leave Petition due to any private revenge or personal vendetta. No ill motive has been attributed on them. We have already taken note of the fact that the very object and purpose of enactment of the POCSO Act and also taken note of the offences alleged against the third respondent which are heinous and serious in nature. The definition to crimes by Blackstone was taken note of in P.S.R. Sadhanantham's case (*supra*) by this Court as "the breach and violation of public rights and duties which affect the whole community" to observe that in such circumstances a crime is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual. In view of the nature of the offences alleged against the third respondent, one can only say that if they are proved they could be treated only as offences

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

against the society and at any rate, it cannot be said that prosecuting an offender against whom such allegations are made is not in the interest of the society. In fact, it would only be in the interest of the society. In that view of the matter, when by quashing the FIR by invoking the power under Section 482, Cr. P.C., the accused was relieved of the liability to face the trial coupled with the aforesaid circumstances and the position of law qua *locus standi* of third party to maintain a petition under Article 136 of the Constitution of India, as revealed from the decisions referred above, we have no hesitation to hold that the challenge based on the appellants' *locus standi* got no merit at all. We do not think it necessary to deal with the other decisions cited before us on the aforesaid question. In short, we find no ground or reason to revoke the grant of leave to the appellants to assail the order dated 04.02.2024.

23. We will now, consider the second question as to whether the power to quash criminal proceedings invoking the power under Section 482, Cr. PC be exercisable solely by relying on the fact that the parties have arrived at a compromise and the decision of this Court in Gian Singh's case (*supra*).
24. The learned amicus curiae submitted that a scanning of the decision of this Court in Gian Singh's case (*supra*) itself would reveal the legal position in regard to the said question. The learned amicus curiae drew our attention to paragraphs 48, 57, 58 and 61 of the said decision. Paragraph 57 and the relevant portions of paragraphs 48, 58 and 61 read thus: -

*"48.....While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution....."*

*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*

**Digital Supreme Court Reports**

*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*

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

*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.*

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, 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

**Digital Supreme Court Reports**

*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.”*

(Underline supplied)

25. Thus, in unambiguous terms this Court held that before exercising the power under Section 482, Cr. PC the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further. A bare perusal of the impugned order dated 04.02.2022 would reveal that the High Court has erred in not bestowing proper consideration the law laid down in **Gian Singh's** case (*supra*) while rendering the same. The impugned order would reveal that the allegations contained in the subject FIR was not at

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

all even adverted to, before quashing the same. We have referred to the allegations which are of serious nature revealed from the FIR. The complaint in this case is annexed to the FIR produced in this proceeding as Annexure P-1. In the said complaint which led to the registration of the FIR reads thus:-

*"Hence my report may be lodged and action may be taken against the offender Vimal Kumar Gupta as he is making pressure on me not to lodge report."*

(underline supplied)

26. In this context, it is to be noted that the complaint which led to the registration of the FIR was filed on 08.01.2022 and the compromise was entered into between the third and fourth respondents within a few weeks thereafter viz., on 31.01.2022. A perusal of the impugned order would reveal that without even referring to the alleged offence and thereby without looking into the nature and gravity of the offence, solely relying upon the compromise, the High Court observed thus: -

*"This Court is aptly guided by the principles propounded by Hon'ble the Supreme Court and feels that whether dispute is essentially inter se between the parties, either they are relatives, neighbours or having business relationship and which does not affect the society at large, then in such cases, with a view to maintain harmonious relationships between the two sides & for restitution of relationship and with a view to end-up the dispute in between them permanently, the High Court should exercise its inherent power to quash the FIR and all other subsequent proceedings initiated thereto. Here in this case, though the offences are not compoundable but the parties have settled the dispute amicably and that is essentially in between the parties which is not-affecting public peace and tranquillity therefore with a view to maintain the harmony and to resolve the dispute finally in between the parties, it is deemed appropriate to quash the FIR and all further proceedings undertaken in pursuance thereof."*

(underline supplied)

27. It is also to be noted that after quashing the FIR and further proceedings, the SHO of the Police Station concerned was directed

**Digital Supreme Court Reports**

to file a closure report with the concerned Judicial Magistrate within a period of one month from the date of receipt of a copy of the order.

28. A bare perusal of the impugned order and in the light of the observations and binding conclusions in *Gian Singh's* case (*supra*), bearing in mind the allegations in the subject FIR, it would reveal that the High Court has misread and misapplied the law laid down in *Gian Singh's* case (*supra*) to quash the subject FIR and all further proceedings based in pursuance thereof. We are at a loss to understand how the High Court arrived at the conclusion that in the case on hand a dispute to be resolved exists between the parties and further that to maintain harmony the FIR and all further proceedings thereto should be quashed even without adverting to the allegations raised against the 3<sup>rd</sup> respondent in the subject FIR. It is also a fact that though in terms of the decision in *Gian Singh's* case (*supra*) an irrecusable duty of the Court to consider whether the compromise could be acted upon or not in the interest of justice, the impugned order would reveal that the High Court has failed to bestow proper consideration in that regard as well.
29. In the contextual situation, it is also relevant to refer to a Three Judge Bench decision of this Court in *State of M.P. v. Laxmi Narayan*<sup>16</sup>. This Court held that whether an FIR is quashable or not would depend upon the facts and circumstances of each case and while considering that question, the Court has to apply its mind to (i) whether the crime is one against the society or against an individual alone, nature of the dispute, (ii) seriousness and how the crime was committed (iii) whether offence(s) is one under a special statute (iv) stage of proceedings and how the accused managed to compromise with the complainant.
30. In this regard, it is relevant to note that in the case on hand the victim was then a student of Class 11<sup>th</sup> in the Higher Secondary aged 16 years. The statement annexed to the FIR of the complainant viz., the 4<sup>th</sup> respondent itself would reveal that on 08.01.2022 he complained about the pressure from the 3<sup>rd</sup> respondent to restrain him from lodging report. The compromise was entered immediately thereafter on 31.01.2022. Despite the said position, the Court has not chosen to consider whether the compromise entered into between the

16 [2019] 2 SCR 864 : (2019) 5 SCC 688

**Ramji Lal Bairwa & Anr. v. State of Rajasthan & Ors.**

parents and the accused could be acted upon or not, in the interest of justice, taking note of the serious allegations levelled against the 3<sup>rd</sup> accused and in view of the law laid down in Gian Singh's case (*supra*). In that context, it is relevant to refer to a decision of a learned Single Judge of the Delhi High Court in **Sunil Raikwar v. State and Another**<sup>17</sup>. Paragraph 12 therein, to the extent it is relevant reads thus:-

*"12. The father of the victim cannot be permitted to settle the dispute with the accused. He is not the victim and the courts have to safeguard and protect the interest of children against onslaught by bad forces. We cannot lose sight of the fact that the accused is being prosecuted for an offence that shocks the value system of a society and this is not a matter that can be permitted to be settled as a compoundable minor offence. Deterrence to others committing similar offence is a must and they cannot get a signal that anything and everything can be compromised....."*

31. In view of the very object and purpose of enacting the POCSO Act, we find no reason to disagree with the conclusions in paragraph 12 extracted above in the given case. It is more so, when the extracted portion from the complaint that was annexed to the FIR and extracted hereinbefore would reveal that the accused was making pressure on him not to lodge any report. Despite giving such statement in the complaint, within a couple of weeks, the accused managed to compromise the case with the 4<sup>th</sup> respondent and his wife.
32. In the decision relied on by the High Court to quash the proceedings viz., Gian Singh's case (*supra*) and the decision in Laxmi Narayan's case (*supra*) in unambiguous terms this Court held that the power under Section 482, Cr. P.C. could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from a teacher, it cannot be simply described as an offence which is purely private in nature and have no serious impact on the society.

**Digital Supreme Court Reports**

33. In view of the reasons as aforesaid and in the light of the decisions referred *supra*, the impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P. No.1348/2022, quashing the FIR No.6/2022 dated 08.01.2022 and all further proceedings pursuant thereto solely on the ground that the accused and the complainant had settled the matter, invites interference. We have no hesitation to hold that in cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr. P.C. In the said circumstances, this appeal is allowed. The impugned order dated 04.02.2022 of the High Court in S.B.C.R.M.P. No.1348/2022 is hereby quashed and set aside. Consequently, the FIR No.6/2022, investigation and criminal proceedings pursuant thereto subject to the nature of the report to be filed under Section 173(2), Cr. P.C., be proceeded with against the accused, in accordance with law.
34. We make it clear that we shall not be understood to have made any observations on the merits of the case.
35. Before parting with this case, we would render our gratitude and appreciation for the invaluable assistance provided to the Court by Mr. R. Basant, learned Senior Counsel as *amicus curiae*, ably assisted by Mr. Aviral Saxena, Advocate on Record.

*Result of the case:* Appeal allowed.

<sup>†</sup>*Headnotes prepared by:* Nidhi Jain