

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 165 of 2023

Bharat Prasad Sahu, aged about 30 years, son of late Nirmal Prasad Sahu, r/o New Kishoreganj, Shivshakti Nagar, P.O.-G.P.O. Ranchi, P.S.-Sukhdevnagar, Dist.-Ranchi

.... Petitioner

Versus

1. The State of Jharkhand
2. Shiv Kumar Yadav, son of Shivdekh Yadav, r/o B.T. Road, Gaadikhana, P.O.-G.P.O. Ranchi, P.S.-Kotwali, Dist.-Ranchi

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioner	: Mr. Vikram Sinha, Advocate
	: Mr. Sameer Saurabh, Advocate
For the State	: Mr. Pankaj Kumar, P.P.
For O.P. No.2	: Mr. Mritunjay Choudhary, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the order dated 17.12.2022 passed by the learned Additional Judicial Commissioner-XVI-cum-Spl. Judge, NIA at Ranchi in Misc. Criminal Application No. 2618 of 2022 in S.T. Case No. 551 of 2019 arising out of Kotwali P.S. Case No. 150 of 2019, corresponding to G.R. No. 1177 of 2019 whereby and where under, a petition under Section 311 Cr.P.C. was filed by the petitioner for recalling of the prosecution witnesses to give effect to the joint compromise petition

filed in the aforesaid case, has been rejected and also in view of the compromise between the parties, the petitioner prays for quashing the entire criminal proceeding against him in connection with S.T. Case No. 551 of 2019 arising out of Kotwali P.S. Case No. 150 of 2019, corresponding to G.R. No. 1177 of 2019.

3. The brief fact of the case is that the petitioner attempted to murder Ajay Yadav by stabbing him with a knife and subsequently, he went on to attempt murder of the mother of Ajay Yadav namely Sona Devi also by stabbing her. Thereafter, he attempted to murder the P.W.3- Sunil Yadav by stabbing him at seven different places in the same series of occurrence.
4. The trial is at the fag end. Six witnesses have been examined by the prosecution and all of them have supported the case of the prosecution. At this fag end, a petition under Section 311 Cr.P.C. was filed by the petitioner to recall/re-examine the witnesses who have already been examined on behalf of the prosecution on the ground that a compromise has been effected to between the parties.
5. The learned Additional Judicial Commissioner-XVI-cum-Spl. Judge, NIA at Ranchi considered the facts of the case and the nature of grievous injury sustained by P.W.4 and the evidence in the record, and did not feel it necessary to provide opportunity to the defence to get the prosecution case demolished by recalling the witnesses and rejected the petition under Section 311 Cr.P.C. vide order dated 17.12.2022.
6. It is submitted by the learned counsel for the petitioner by relying upon the judgment of Hon'ble Supreme Court of India in the case of **Yogendra Yadav v. State of Jharkhand** reported in (2014) 9 SCC 653, paragraph no. 4 of which reads as under:-

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect 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, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace." (Emphasis supplied)

that the High Court can quash a criminal proceeding in exercise of its power under Section 482 Cr.P.C. in respect of non-compoundable offences also in appropriate cases.

7. It is submitted by the learned counsel for the petitioner that since a compromise has been effected to between the parties. Hence, the order dated 17.12.2022 passed by the learned Additional Judicial Commissioner-XVI-cum-Spl. Judge, NIA at Ranchi in Misc. Criminal Application No. 2618 of 2022 in S.T. Case No. 551 of 2019 arising out of Kotwali P.S. Case No. 150 of 2019, corresponding to G.R. No. 1177 of 2019 as also the entire criminal proceeding against him in

connection with S.T. Case No. 551 of 2019 arising out of Kotwali P.S. Case No. 150 of 2019, corresponding to G.R. No. 1177 of 2019 be quashed and set aside.

8. Learned Public Prosecutor on the other hand opposes the prayer for quashing the order dated 17.12.2022 passed by the learned Additional Judicial Commissioner-XVI-cum-Spl. Judge, NIA at Ranchi in Misc. Criminal Application No. 2618 of 2022 in S.T. Case No. 551 of 2019 arising out of Kotwali P.S. Case No. 150 of 2019, corresponding to G.R. No. 1177 of 2019 and the entire criminal proceeding against him in connection with the said case and submits that there is absolutely no illegality in the same. It is next submitted by learned Public Prosecutor that as the evidence in the record is sufficient to bring home the charge *inter alia* for the offence punishable under Section 307 of Indian Penal Code hence, this prosecution cannot be termed as lame prosecution which is a *sine-qua-non* for quashing the non-compoundable offences by the High Court in exercise of its power under Section 482 Cr.P.C. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

9. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Narinder Singh and Others vs. State of Punjab & Another** reported in (2014) 6 SCC 466, in paragraph 29 of which reads as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing

to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of 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/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by

the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after *prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."* (Emphasis supplied)

that the power to exercise under Section 482 Cr.P.C. ought not to be exercised at the fag end of the trial, if there is a strong possibility of conviction and where the prosecution evidence is almost complete.

10. Now coming to the facts of the case, all the material witnesses who have been examined in the trial have supported the case of the prosecution. Most of the witnesses have already been examined.
11. So far as the order dated 17.12.2022 is concerned, it is a settled principle of law that the power under Section 311 Cr.P.C. can be exercised by a trial court if such evidence appear to be essential for the just decision of the case. It is a settled principle of law that a witness who has already been examined in the court should not unnecessary be harassed by creating the circumstance under which

such witness will have no option but to resile from the earlier statement and certainly, such tactics does not come under the words "evidence appears to be essential for just decision of the case" , as mentioned in section 311 of the Code of Criminal Procedure. Hence, this Court do not find any illegality in the said order dated 17.12.2022.

12. So far as the prayer to quash the entire criminal proceeding on the ground that there has been a compromise between the parties after examination of six witnesses by the prosecution who have all supported the case of the prosecution is concerned, the same is also not permissible in law. No doubt the High Court has the power under Section 482 Cr.P.C. to compound non-compoundable offences in appropriate cases but in this case, there is serious allegation against the petitioner and his conduct of attempting to murder *inter alia* an unarmed old lady by stabbing her besides attempting to murder P.W.3 by stabbing him at seven different places of the body as also attempting to murder Ajay Yadav, and all the stabbings were made by a knife; this Court of the considered view that this is not a fit case where the entire criminal proceeding involving the offence punishable under Section 307 of Indian Penal Code on the basis of compromise be quashed and set aside.
13. In view of the discussions made above, this Court does not find any merit in this criminal miscellaneous petition.
14. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)