

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No. 243 of 2014 and
Cr.M.P.No. 872 of 2015.**

Date of decision: 07.08.015.

Jagdeep Singh

.....Petitioner.

Versus

Salochna Sharma and another

.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? No

For the Petitioner : Mr. C. S. Thakur, Advocate.

**For the Respondent : Mr. Naveen Awasthi, Advocate, vice
Mr. H.S. Upadhyay, Advocate, for
respondent No.1.**

**Mr. V.K.Verma, Ms. Meenakshi Sharma
and Mr. Rupinder Singh, Addl. A.G., for
respondent No.2.**

Tarlok Singh Chauhan, Judge (Oral).

By way of present revision petition, the petitioner seeks setting aside of the judgment dated 2.6.2014 passed by the learned Additional Sessions Judge (II), Shimla in Criminal Appeal No. 10-S/10 of 2014/13 whereby he affirmed the judgment dated 24.4.2013 passed by learned Judicial Magistrate Ist Class, Court No. 3, Shimla, in Case No. 3979-3 of 2010, in a complaint filed by the complainant/respondent No.1 against the petitioner under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as the 'Act') wherein the petitioner was convicted and sentenced to undergo simple

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

imprisonment for six months and to pay compensation of ₹1,80,000/- to the complainant.

2. An application under Section 147 Cr.P.C. has been filed by the parties wherein it has been stated that the parties have amicably settled the matter.

3. Today, the petitioner and respondent No.1 /complainant are present in the Court and have been identified by their respective counsels. It is represented by learned counsel for the parties that the matter has been amicably settled between the parties and the settled amount has already been paid by the petitioner to respondent No.1, which she has duly acknowledged. It is represented by No.1/complainant that she has received the whole amount and no further amount is due from the petitioner.

4. From the records of the case, I find that this is not a case wherein the offence for which the petitioner has been charged can '*stricto sensu*' be termed to be an offence against the State. Therefore, this is a case where the continuation of criminal case against the petitioner would put the petitioner to great oppression and prejudice and extreme injustice would be caused to him by not setting aside the impugned judgments of conviction and sentence.

5. This court is not powerless in such situation and adequate powers have been conferred upon it, not under sections 397 read with Section 401 or Section 482 Cr.P.C. (hereinafter referred to as the Code) but also under Section 147 of the Act for accepting the settlement entered into between the parties and to quash the proceedings arising out of the proceedings, which have consequently culminated into a settlement. This power has been conferred to

subserve the ends of justice or/ and to prevent abuse of the process of any court. Though, such power is required to be exercised with circumspection and in cases which do not involve heinous and serious offence of mental depravity or offences like murder, rape, dacoity etc. The law on this subject has been summed up in a recent judgment of the Hon'ble Supreme Court in **Narinder Singh & Ors. V. State of Punjab & Anr. JT 2014 (4) SC 573**, wherein it was held as under:

(I) 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.

(II) 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.

(III) 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 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.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is 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/important 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 later 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.

(VII) 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 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."

6. As already observed herein, the parties have already reached an amicable settlement and at best it was the complainant/respondent No.1, who could be said to be affected and aggrieved party, but herein even the affected and aggrieved party i.e. complainant/respondent No.1 is not interested to pursue the complaint and does not want to hold the petitioner responsible for the offence under the Act. Therefore, quashing of the complaint initiated at the instance of the respondent No.1/complainant would be a step towards securing the ends of justice and to prevent abuse of process of the Court.

7. Keeping in mind the aforesaid exposition of law, it is clear that the facts of this case do not in any manner fall within the exception culled out by the Hon'ble Supreme Court in **Narinder Singh** case (supra).

8. Thus, taking holistic view of the matter and further taking into consideration all the attending facts and circumstances as also the law laid down by the Hon'ble Supreme Court in **Narinder Singh's** case (supra), I find this to be a fit case to exercise the powers not only under Sections 397, 401 and Section 482 of the Code, but even under Section 147 of the Act.

9. Accordingly, the judgment dated 2.6.2014 passed by the learned Additional Sessions Judge (II), Shimla in Criminal Appeal No. 10-S/10 of 2014/13 whereby he affirmed the judgment dated 24.4.2013

passed by learned Judicial Magistrate 1st Class, Court No. 3, Shimla, in Case No. 3979-3 of 2010, in a complaint filed by the complainant/respondent No.1 against the petitioner under Section 138 of the Act wherein the petitioner was convicted and sentenced to undergo simple imprisonment for six months and to pay compensation of ₹1,80,000/- to the complainant/respondent No.1, are set aside. Consequently, the petitioner is acquitted of the offence under Section 138 of the Act.

10. Accordingly, the revision petition is disposed of in the aforesaid terms, so also the pending application.

Copy *dasti*.

August 7, 2015
(GR)

(Tarlok Singh Chauhan)
Judge.