IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 585 of 2024
Reserved on: 09.07.2024
Date of Decision: 19.7.2024.

Mohan Singh & others ...Petitioners

Versus

State of Himachal Pradesh & Anr. ...Respondents

Coram
Hon'ble Mr. Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***No***

For the Petitioners : Mr. Ganesh Barowalia, Advocate.

For the Respondents : Mr Lokender Kutlehria, Additional Advocate, General for respondent No.1/State.

Mr Gambir Singh Chauhan, Advocate, for respondent No.2.

Rakesh Kainthla, Judge

The petitioners have filed the present petition for quashing of F.I.R. No. 0070 of 2023, dated 17.10.2023, registered for the commission of offences punishable under Sections, 323, 504, 506

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

read with Section 34 of IPC at Police Station Shillai, District Sirmour, H.P. and consequential proceedings arising out of the F.I.R.

2. It has been asserted that the dispute between the parties has been settled with the intervention of the local people. No fruitful purpose would be served by pursuing the consequent proceedings arising out of the F.I.R. The continuation of the proceedings would amount to an abuse of the process of the Court. There is no efficacious remedy except the present petition. Hence, it was prayed that the present petition be allowed and the F.I.R. and consequential proceedings arising thereto be ordered to be quashed.

3. All the offences mentioned in the F.I.R. are compoundable as per Section 320(1) of Cr. P.C. without the intervention of the Court. Hence, the parties were heard on the question of maintainability of the present petition before this Court.

4. Mr Ganesh Barowalia, learned counsel for the petitioners relied upon para 48(d) of the judgment of Hon'ble Supreme Court in ***Gian Singh v. State of Punjab*, *(2012) 10 SCC 303*** to submit that the offence punishable under Section 506 (2) of IPC is non-compoundable; therefore, the present petition is maintainable before this Court. He further submitted that even if the offences are compoundable, the Court had quashed the F.I.R. for such offences. He

placed reliance on the judgments of this Court in ***State of H.P. Vs. Kamal Singh & another, Criminal Revision No. 163 of 2008, decided on 14th June, 201*** and ***Sunita Devi vs State of H.P.& others, Cr.MP(M) No. 576 of 2022, decided on 5th August 2022*** in support of his submission.

5. Mr. Lokender Kutlehria, learned Additional Advocate General for respondent No.1/State submitted that the power under Section 482 of Cr.P.C. is extraordinary and should be sparingly exercised. In the present case, such power should not be exercised when an alternative remedy is available to approach the learned Trial Court. Hence, he prayed that the present petition be dismissed.

6. Mr. Gambir Singh Chauhan, learned counsel for respondent No.2 supported the submissions advanced by learned counsel for the petitioners and prayed that the present petition be allowed.

7. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

8. Para 48 of the judgment of the Hon'ble Supreme Court in ***Gain Singh's case (supra)*** reads as under:-

> **48.** A five-judge Bench of the Punjab and Haryana High Court in ***Kulwinder Singh v. State of Punjab*** [***(2007) 4 CTC 769***] was called upon to determine, inter alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of

the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The five-Judge Bench referred to quite a few decisions of this Court including the decisions in ***Madhu Limaye [(1977) 4 SCC 551: 1978 SCC (Cri) 10]***, ***Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426]***, ***L. Muniswamy [(1977) 2 SCC 699: 1977 SCC (Cri) 404]***, ***Simrikhia [(1990) 2 SCC 437: 1990 SCC (Cri) 327]***, ***B.S. Joshi [(2003) 4 SCC 675: 2003 SCC (Cri) 848]*** and ***Ram Lal [(1999) 2 SCC 213: 1999 SCC (Cri) 123]*** and framed the following guidelines : (*Kulwinder Singh case* [(2007) 4 CTC 769], CTC pp. 783-84, para 21)

> "21. ... '(*a*) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.
>
> (*b*) Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to a larger number of people.
>
> (*c*) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.
>
> (*d*) Minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non-compoundable is Section 506(II) IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148 IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148 IPC compoundable offences by amending the schedule under Section 320 CrPC.
>
> (*e*) The offences against the human body other than murder and culpable homicide where the victim dies in the course of the transaction would fall in the category where compounding may not be permitted. Heinous

> offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public servants purporting to act in that capacity as also offences against public servants while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter VII (relating to army, navy and air force) must remain non-compoundable.
>
> (*f*) That as a broad guideline, offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.
>
> 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 undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution.'
>
> To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the court to exercise its power under Section 482 CrPC. The only principle that can be laid down is the one which has been incorporated in the section itself i.e. 'to prevent abuse of the process of any court' or 'to secure the ends of justice'."

9. It is apparent from the complete reading of this paragraph that the Hon'ble Supreme Court had quoted the five Judge bench decisions of the Punjab and Haryana High Court in ***Kulwinder Singh*** (Supra) and has not decided any question regarding the compoundability of Section 506 of IPC. The Cr.P.C. nowhere provides any distinction between the two parts of Section 506 of the IPC and merely provides that criminal intimidation punishable under Section 506 of the IPC is compoundable at the instance of the person

intimidated. It was held by this Court in ***Kamla Thakur v. State of H.P.*, *2024 SCC OnLine HP 859*** that the offence punishable under Section 506 of IPC is compoundable. It was observed:

> "7. From a perusal of Section 320 of the Code of Criminal Procedure, it is evident that in so far as Sections 506 and 509 of the Penal Code, 1860 are concerned, the same are compoundable."

10. In ***Kamal Singh's case (supra)***, the question was not related to the offence punishable under Section 506 of IPC being compoundable or not but whether the same was cognizable or non-cognizable. The Court noticed the Notification issued by the State Government, which has made Section 506 (2) of IPC cognizable and non-bailable; therefore, not much advantage can be derived from this judgment.

11. In ***Sunita Devi's case (supra)***, this Court never decided the question whether the jurisdiction under Section 482 of Cr.P.C. can be exercised when the alternative remedy is available or not. Hence, this judgment will not assist the petitioners.

12. It was held in ***Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10*** that inherent power should not be exercised when a specific remedy exists. It was observed:

> At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which

have been followed ordinarily and generally, almost invariably, barring a few exceptions:

> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
>
> (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
>
> (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

13. It was laid down by the Full Bench of Delhi High Court in ***Gopal Dass vs State AIR 1978 Del 138,*** that the power under Section 482 of Cr.P.C. is vested in the Court to make such order as may be necessary to give effect to any order under the Code, prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power cannot be exercised when a specific remedy is available under the other provisions of the Code. It was observed:-

> **"8.** In order to determine the question under consideration as to what is the scope of the inherent powers of the High Court becomes relevant. The inherent powers of the High Court inhere in it because of its being at the apex of the judicial set-up in a State. The inherent powers of the High Court, preserved by section 482 of the Code, are to be exercised in making orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 482 envisages that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court exercised by it with the object of achieving the above said three results. It is for this reason that section 482 does not prescribe the contours of the inherent powers of the High Court which are wide enough to be

> exercised in suitable cases to afford relief to an aggrieved party. While exercising inherent powers it has to be borne in mind that this power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. (See ***R.P. Kapur v. State of Punjab, AIR 1960 S.C. 866) (1)***. This principle of law had been reiterated succinctly by the Supreme Court recently in ***Palanippa Gounder v. The State of Tamil Nadu, (1977) 2 SCC 634: AIR 1977 S.C. 1323 (2)*** therein examining the scope of section 482 it was observed that a provision which saves the inherent powers of a Court cannot override any express provision in the statute which saves that power. *Putting it in another form the Court observed that if there is an express provision in a statute governing a particular subject there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter*." (Emphasis supplied)

14. It was held in ***Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076: 1999 SCC OnLine SC 647*** that power under Section 482 of Cr.P.C. is extraordinary and should not be exercised when specific remedy has been provided under the Code. It was observed:

> "**2.** It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short "the Code") has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by the so-called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. *But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited*

jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer a statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial.

xxxxx

9. In our view, the order passed by the High Court entertaining the petition of the convicted accused under Section 482 of the Code is, on the face of it, illegal, erroneous and to say the least, unfortunate. It was known to the High Court that the trial court passed proceedings to the effect that final judgment and order convicting the accused were pronounced by the trial court. It was also recorded by the trial court that as the accused were absent, the Court had issued non-bailable warrants. In such a situation, instead of directing the accused to remain present before the Court for resorting to the steps contemplated by the law for passing the sentence, the High Court has stayed further proceedings including the operation of the non-bailable warrants issued by the trial court. *It is disquieting that the High Court has overlooked the important legal aspect that the accused have a right of appeal against the order of conviction purported to have been passed by the trial court. In such circumstances, the High Court ought not to have entertained a petition under Section 482 of the Code and stonewalled the very efficacious alternative remedy of appeal as provided in the Code.* Merely because the accused made certain allegations against the trial Judge the substantive law cannot be bypassed.

15. It was held by the Hon'ble Supreme Court in ***Hamida v. Rashid*, *(2008) 1 SCC 474*,** that the inherent power under Section 482 of Cr.P.C. is to be exercised sparingly and should not be exercised when an alternative remedy is available. It was observed:

> "**7.** It is a well-established principle that inherent power conferred on the High Courts under Section 482 CrPC has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 CrPC were examined in considerable detail in ***Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551: 1978 SCC (Cri) 10: AIR 1978 SC 47]*** and it was held as under : (SCC p. 555, para 8)
>
> > The following principles may be stated in relation to the exercise of the inherent power of the High Court:
> >
> > (*1*) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
> >
> > (2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;
> >
> > (3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.
>
> **8.** In ***State v. Navjot Sandhu [(2003) 6 SCC 641: 2003 SCC (Cri) 1545]*** after a review of a large number of earlier decisions, it was held as under : (SCC p. 657, para 29)
>
> > "29. ... The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally,

> vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

9. In ***Arun Shankar Shukla v. State of U.P. [(1999) 6 SCC 146: 1999 SCC (Cri) 1076]*** the High Court had entertained a petition under Section 482 CrPC after an order of conviction had been passed by the Sessions Judge and before the sentence had been awarded and further proceedings in the case had been stayed. In appeal, this Court set aside the order of the High Court after reiterating the principle that it is well settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. It was further observed that the High Court overlooked the procedural law which empowered the convicted accused to prefer a statutory appeal against conviction of the offence and intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial. The order of the High Court was accordingly set aside on the ground that a petition under Section 482 CrPC could not have been entertained as the accused had an alternative remedy of an appeal as provided in the Code. *It is not necessary to burden this judgment with other decisions of this Court as the consistent view throughout has been that a petition under Section 482 CrPC cannot be entertained if there is any other specific provision in the Code of Criminal Procedure for redress of the grievance of the aggrieved party.*

10. In the case in hand, the respondents-accused could apply for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under Section 482 CrPC in order to circumvent the procedure whereunder they would have been required to surrender as the bail application could be entertained and heard

> only if the accused were in custody. It is important to note that no order adverse to the respondents-accused had been passed by any court nor was there any miscarriage of justice or any illegality. In such circumstances, the High Court committed a manifest error of law in entertaining a petition under Section 482 CrPC and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. The effect of the order passed by the High Court is that the accused after getting bail in an offence under Sections 324, 352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to his injuries and the case had been converted into one under Section 304 IPC without any court examining the case on merits, as it stood after conversion of the offence. The procedure laid down for the grant of bail under Section 439 CrPC, though available to the respondents-accused, having not been availed of, the exercise of power by the High Court under Section 482 CrPC is clearly illegal and the impugned order passed by it has to be set aside." (Emphasis supplied)

16. Similarly, it was held in ***B.S. Joshi vs. State of Haryana 2003 (4) SCC 675,*** that the High Court can quash the F.I.R. in non-compoundable offences based on compromise suggesting that the power under Section 482 Cr.P.C. is not to be exercised in respect offences, which are compoundable under Section 320 of Cr.P.C. except in exceptional cases.

17. In the present case, the petition is silent as to why the petitioners cannot approach the learned Trial Court for compounding the offences. Para-9 of the petition states that there is no other efficacious remedy available to the petitioners except to file the

present petition seeking quashing of F.I.R. This is an incorrect statement because Section 320 (1) of Cr.P.C. confers a right upon the persons mentioned in the Section to compound the offence. Since the offences fall under Section 320 (1) of Cr.P.C., therefore, the permission of the Court is also not required and it cannot be said that the Court is not likely to grant the permission justifying the filing of the present petition. Thus, there exists no reason to exercise the extraordinary power vested in this Court under Section 482 of Cr.P.C. when the alternative remedy is available.

18. In view of the above, the present petition fails and the same is dismissed. However, this order will not prevent the parties from approaching the learned Trial Court seeking the composition of the offences.

19. The petition stands disposed of, so also the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

19th July, 2024
(Ravinder)