* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C.852/2021 & CRL.M.A.4232/2021 (Stay)

Date of decision: 17th March, 2021

IN THE MATTER OF:

MAHENDER SINGH ALIAS SUNNY & ANR .....Petitioners

Through Mr. Satish Kumar, Advocate along with petitioners in person.

versus

THE STATE & ORS ..... Respondents

Through Mr. Hirein Sharma, APP for the State
Respondents No.2 and 3 in person

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) has been filed for quashing FIR No.46/2018 dated 27.01.2018, registered in Police Station Neb Sarai, Delhi, for offence under Section 308/34 IPC.

2. FIR No.46/2018 has been registered on the complaint of respondent No.2. In the complaint it is stated that on 26.01.2018, when the complainant and his friend Dheeraj/respondent No.3 herein were returning from their coaching on his Splendor Bike, at about 8:00-8:15 PM, they were stopped by the accused near Sona Public School. It is stated that Sunny/petitioner No.2 kicked the bike and the complainant and his friend fell down from the bike and the petitioners started beating Dheeraj/respondent No.3. It is stated that when the complainant/respondent No.2 tried to stop the accused, the

accused started abusing the complainant and started fighting with him. It is stated that the accused Sunny/petitioner No.1 picked up a *danda* and hit the complainant on his head and the complainant fell on the ground. When people gathered there the accused threatened the complainant of dire consequences and left. It is stated that the brother of the complainant came there and called the Police. A PCR Van came and took the victims to the AIIMS Trauma Centre. In the MLC the doctor recorded the nature of injury and it was opined that the victim had sustained minor head injury with left periorbital swelling. Charge-sheet has been filed against the accused. The accused/petitioner No.2 has been granted anticipatory bail on 04.02.2018.

3. This petition has been filed on the ground that after the intervention of the parents and well-wishers the parties have stated to settle their disputes. A settlement deed dated 16.02.2021 (Annexure P-4) has been filed.

4. The present case is for quashing the criminal proceedings for offences under Section 308 IPC. There was a conflict of opinion in various judgments by the Supreme Court as to whether an offence under Section 307 IPC could be quashed by the High Court while exercising its power under Section 482 Cr.P.C. The Supreme Court in State of Rajasthan v. Shambhu Kewat**, (2014) 4 SCC 149,** held that an offence under Section 307 IPC cannot be quashed by the High Court while exercising its powers under Section 482 Cr.P.C on the ground that the parties have settled their disputes. The Supreme Court observed as under:

> ***"15.*** *We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control*

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

On the other hand the Supreme Court in Narinder Singh v. State of Punjab, **(2014) 6 SCC 466,** after noticing the judgment in State of Rajasthan v. Shambhu Kewat (supra) quashed the proceedings under Section 307 IPC and observed as under:

> *"**22**. Thus, we find that in certain circumstances, this Court has approved the quashing of proceedings under Section 307 IPC whereas in some other cases, it is held that as the offence is of serious nature such proceedings cannot be quashed. Though in each of the aforesaid cases the view taken by this Court may be justified on its own facts, at the same time this Court owes an explanation as to why two different approaches are adopted in various cases. The law*

declared by this Court in the form of judgments becomes binding precedent for the High Courts and the subordinate courts, to follow under Article 141 of the Constitution of India. Stare decisis is the fundamental principle of judicial decision-making which requires "certainty" too in law so that in a given set of facts the course of action which law shall take is discernible and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance. The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. It has, therefore, support from the human sense of justice as well. The force of precedent in the law is heightened, in the words of Karl Llewellyn, by "that curious, almost universal sense of justice which urges that all men are to be treated alike in like circumstances".

***23**. **As there is a close relation between equality and justice, it should be clearly discernible as to how the two prosecutions under Section 307 IPC are different in nature and therefore are given different treatment. With this ideal objective in mind, we are proceeding to discuss the subject at length. It is for this reason we deem it appropriate to lay down some distinct, definite and clear guidelines which can be kept in mind by the High Courts to take a view as to under what circumstances it should accept the settlement between the parties and quash the proceedings and under what circumstances it should refrain from doing so**. We make it clear that though there would be a general discussion in this behalf as well, the matter is examined in the context of the offences under Section 307 IPC.*

> ***24***. ***The two rival parties have amicably settled the disputes between themselves and buried the hatchet. Not only this, they say that since they are neighbours, they want to live like good neighbours and that was the reason for restoring friendly ties. In such a scenario, should the court give its imprimatur to such a settlement?*** *The answer depends on various incidental aspects which need serious discourse. The legislators have categorically recognised that those offences which are covered by the provisions of Section 320 of the Code are concededly those which not only do not fall within the category of heinous crimes but also which are personal between the parties. Therefore, this provision recognises where there is a compromise between the parties, the court is to act at the said compromise and quash the proceedings. However, even in respect of such offences not covered within the four corners of Section 320 of the Code, the High Court is given power under Section 482 of the Code to accept the compromise between the parties and quash the proceedings.* ***The guiding factor is as to whether the ends of justice would justify such exercise of power, both the ultimate consequences may be acquittal or dismissal of indictment. This is so recognised in various judgments taken note of above****."* (emphasis supplied)

A larger Bench of Supreme Court in State of M.P. v. Laxmi Narayan, **(2019) 5 SCC 688,** resolved the conflict by observing as under:

> ***"14.*** *Now so far as the conflict between the decisions of this Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] and Shambhu Kewat [State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149 : (2014) 4 SCC (Cri) 781] is concerned, in Shambhu Kewat [State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149 : (2014) 4 SCC (Cri) 781] , this Court has noted the*

difference between the power of compounding of offences conferred on a court under Section 320 CrPC and the powers conferred under Section 482 CrPC for quashing of criminal proceedings by the High Court. In the said decision, this Court further observed that in compounding the offences, the power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC and the court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing criminal proceedings or criminal complaint under Section 482 CrPC is guided by the material on record as to whether ends of justice would justify such exercise of power, although ultimate consequence may be acquittal or dismissal of indictment. However, in the subsequent decision in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] , the very Bench ultimately concluded in para 29 as under: (SCC pp. 482-84)

" ***xxxxx***

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."

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15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove****;***
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> ***15.5*** *[Ed.: Para 15.5 corrected vide Official Corrigendum No. F.3/Ed.B.J./22/2019 dated 3-4-2019.] . While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."*
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> (emphasis supplied)

5. A perusal of the above judgments would show that the Courts must be slow in exercising their jurisdiction under Section 482 for quashing the proceedings arising out of offences punishable under Section 307/308 IPC. The parameters laid down in State of M.P. v. Laxmi Narayan (supra) state that the powers conferred on the High Courts under Section 482 Cr.P.C can be exercised keeping in mind the injuries sustained, nature of weapons used, etc.

6. The facts of the present case disclose that the injuries sustained by the complainants are simple and minor in nature. Mr. Satish Kumar, learned counsel for the petitioners state that the parties are related to each other and for peace in the family the FIR be quashed.

7. The petitioners are accused of committing an offence punishable under Section 308 IPC and this petition has been filed on the basis of a compromise arrived at between the parties. Keeping in mind the fact that the petitioners are youngsters, petitioner No.1 is about 22 years old and the petitioner No.2 is about 25 years old, having entire life ahead of them, the fact that the parties are related to each other and the injury sustained by the complainant is only minor in nature, this Court is inclined to quash the FIR exercising its jurisdiction under Section 482 Cr.P.C. The petitioners have to understand that anger does not give a license to take law in their hands. In order to sober down the petitioners this Court feels that they should do some community service for at least one month.

8. Accordingly, petitioners are directed to do community service at Dr. Ram Manohar Lohia Hospital for a period of one month i.e. from 28.03.2021 to 28.04.2021.

9. This Court is also inclined to impose cost of Rs.25,000/-(Rupees Twenty Thousand Only) each on the petitioner No.1 and the petitioner No.2. The amount shall be paid to the 'Army Welfare Fund Battle Casualties'. Copy of the receipts be filed with the Registry within three weeks from today to show compliance of the order.

10. After completion of one month, a certificate from Medical Superintendent, Dr. Ram Manohar Lohia Hospital, be also filed to show compliance of the order. In case of any absenteeism/default on the part of

the petitioner, the same shall be conveyed immediately by the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, to the concerned SHO, who shall in turn inform the learned APP for the State, for bringing the same to the notice of the Court and for seeking recall of the orders passed today.

11. With the above directions the petition is disposed of along with the pending applications, if any.

12. A copy of this order be transmitted to Dr. Ram Manohar Lohia Hospital.

SUBRAMONIUM PRASAD, J

MARCH 17, 2021
Rahul