

A.F.R.

Court No. - 64

Case :- APPLICATION U/S 482 No. - 17220 of 2023

Applicant :- Mujeem

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Prabhakar Chandel

Counsel for Opposite Party :- G.A.,Devendra Singh

Hon'ble J.J. Munir,J.

This application has been filed seeking to quash the entire proceedings of Session Trial No. 152 of 2012, State vs. Mujeem (arising out of Case Crime No. 950 of 2010) under Section 307 IPC, P.S. Raipura, District Chitrakoot, pending in the Court of the Additional Sessions Judge, Court No. 1, Chitrakoot.

The submission of learned counsel for the applicant is that the parties have compromised the matter and moved a compromise application before the learned Additional Sessions Judge, Court No. 1, Chitrakoot in Session Trial No. 152 of 2012, State vs. Mujeem on 04.04.2023, a certified copy whereof is annexed as Annexure no. 5 to this application. It is argued that there are no chances of conviction since the complainant-opposite party has compromised and would not testify in support of the prosecution, in case trial is held.

A perusal of the prosecution case shows that according to the first informant, who is the complainant-opposite party no. 2 here, the complainant Sahid Ali son of Raja Husain, a resident of Village Dera, Mauja Bandhi of P.S. Raipura, District Chitrakoot along with his uncle Shamshad on 29.12.2010 was riding a motorcycle proceeding home from village Bandhi. When the two reached the Kapoori turning, the applicant, Mujeem was waiting by the side of the canal. It is said that he bore a grudge against the applicant. Upon seeing the complainant, the applicant chased the complainant at about 7:30 in the evening, and, shortly thereafter, opened fire. The complainant received a gun shot injury to his neck. Despite the injury, the complainant and his uncle gave a chase to the applicant, but he made good his escape. The injuries were subjected to a medico-legal examination at the Combined Hospital Chitrakoot, where the following injury was noted:

"1. Lacerated wound 2cm x 1 cm back of the neck blackening 12cm x 12 cm around it. Swelling goes to lateral side of neck up to neck. Depth could not be ascertained. Kept under observation. Fresh blood present. Adv. X-ray Neck

Opinion- Above mention injury caused by fire-arm and fresh."

Later on an X-ray examination of the injury was done and the Department of

Radiology, M.L.N. Medical College, S.R.N. Hospital, Allahabad submitted a medico legal report dated 11.02.2011, which reads:

1. X-ray cervical spine

-Xray face

-No evidence of bony fracture seen on cervical region.

-Evidence of radio opaque shadow of metallic density seen on temporomandibular joint.

2. X-ray chest PA view.

No evidence of bony fracture seen part under view.

(emphasis by Court.)

A reading of the FIR and the medico-legal report does not spare a shadow of doubt that the applicant shot the complainant-opposite party with a country-made pistol and the complainant received a gun shot wound to his neck. It is only by sheer luck that he survived the fatal attack. Learned counsel for the applicant says that since there are no chances of conviction and given the stance of the complainant-opposite party, who is willing to compromise, proceedings of the case ought to be quashed in view of the holding of the Supreme Court in **Narinder Singh and others vs. State of Punjab and another (2014) 6 SCC 466**. In **Narinder Singh(Supra)**, the following guidelines have been laid down:

"**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 by Court)

Now, here the evidence shows that the weapon used was a fire-arm and it brooks little doubt that a person who opens FIR at another does so with the intention to kill. He certainly does not do so with the intention to love or play a jest.

In this case, the gun shot injury was sustained on the neck, which is a vital part of the body. The medico legal report clearly shows that there was blackening in the area of 12cm x 12cm at the site of the injury on the neck, where the gun shot injury was received. The supplementary medical report shows evidence of a radio-opaque shadow of metallic density seen in the temporomandibular joint. This shows that the pellets from the fire-arm were lodged in the temporomandibular joint. This being the nature of and injury and the site, beside the weapon used, to permit the parties to compromise would be an abdication of the State's function to prosecute offences against the society. This certainly, in opinion of the Court, cannot be permitted. To the understanding of this Court, the principle laid down in **Narinder Singh** case does not approve of such a composition and quashing on its basis.

This order will in no manner prejudice in doing an independent of evidence at the trial.

This application is **rejected**.

Let this order be communicated to the Additional Sessions Judge, Court No. 1, Chitrakoot through the learned Sessions Judge, Chitrakoot by the Registrar (Compliance) **within 48 hours**.

Order Date :- 17.5.2023/Deepak