

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

CRM(M) no.297/2021
c/w Bail App no.129/2021
Bail App no.111/2022

Reserved on: 11.12.2024

Pronounced on: 13.02.2025

Syed Mazloom Hussain and others

.....Petitioner(s)

Through: Mr Ateeb Kanth, Advocate

Versus

Government of J&K and others

.....Respondent(s)

Through: Mr Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Petitioners pray to quash FIR no.0070/2021 dated 19th July 2021 registered under Section 366, 109 IPC in police station Uri, Baramulla, on the grounds mentioned in the instant petition.
2. It is claimed by petitioners that petitioners 1&2 are brothers of petitioner no.3. Petitioner no.3 is alleged to have married respondent no.5, who is major and that earlier, petitioner no.3 and respondent no.2 had approached this Court with WP(C) no.1411/2021, which was disposed of vide Order dated 28th July 2021. According to petitioners, respondent no.5 is major and has contracted marriage out of her own free will and consent and to this extent they have placed on record a copy of Nikah Nama, Marriage Agreement, order dated 28th July 2021 passed in WP(C) no.1411/2021.

3. Reply has been filed by respondent no.2, in which it is stated that on 19th July 2021, police station Uri upon receipt of a written complaint lodged an FIR no.70/2021, impugned herein, and set into motion investigation. During course of investigation, statement of witnesses under Section 161 Cr.P.C. was recorded, by which it came to know that respondent no.5, was kidnapped by Syed Imtiyaz Hussain – petitioner no.3 herein with the help of his brothers. Prosecutrix/respondent no.5 was recovered from the possession of accused person at NS Bridge Uri. Medical checkup of prosecutrix was conducted. She was produced before Sub Judge, Uri. Her statement under Section 164 Cr.P.C. was recorded, in which she deposed that she was jointly raped by accused persons at unknown place, so offences punishable under Section 376D, 384, 506 IPC were incorporated in the case. It is also stated by respondents that petitioners are involved in heinous offence against woman.
4. I have heard counsel for parties and considered the matter. I have gone through the record.
5. It is contention of counsel for petitioners that action of respondents smack of irregularities as police is unnecessarily harassing petitioners. Allegations in FIR are absurd and mere ipse dixit and are wild allegations.
6. According to respondents, after lodgment of impugned FIR, prosecutrix/respondent no.5 got her statement recorded under Section 164 Cr.P.C. before the court of Sub Judge, Uri. In view of her statement, offences punishable under Section 376-D, 384, 506 IPC were incorporated in the case against petitioners.
7. During pendency of this petition, Mr. Ateeb Kanth, counsel appearing for petitioners and Mr Showkat Ahmad Dar, appearing for respondent no.5,

had made an attempt to move two applications, viz. CM nos.1022/2022 and 1023/2022, averring therein that parties had entered into compromise. However, a Bench of this Court observed and said that it would be open for petitioners to bring all the facts made mention of therein and documents annexed with the applications to the notice of Investigating Officer as this Court in exercise of jurisdiction under Section 482 Cr.P.C. would not hold a mini-trial and give its findings on the veracity of the claims and documents placed on record by petitioners before this Court.

8. Worthwhile to mention here that settlement or compromise must satisfy conscience of the Court. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not same as compounding of offence. For serious offences, like murder, rape, dacoity, etc., or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, settlement between offender and victim can have no legal sanction at all. Each case will depend on its own facts and no hard-and-fast category can be prescribed; and the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end. Reference in this regard is made to *Gian Singh v. State of Punjab, (2012) 10 SCC 303*. It was further said that quashing of offence or criminal proceedings on the ground of settlement between an

offender and victim is not the same thing as compounding of offence. The Supreme Court, highlighting the difference, had the following to say:

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

9. As is clear from a close reading of above paragraphs, even though compounding and quashing are conceptually different, the Supreme Court has pointed out that merely because there is a settlement for certain

categories of offences, proceedings will not be quashed. This is on the premise that crimes which have harmful effects on the public and consist of wrongdoing that seriously endangers and threatens the well-being of the society cannot be quashed, only because the accused and the victim have amicably settled the matter.

10. The Supreme Court in unambiguous terms held that before exercising the power under Section 482 Cr.P.C., the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. The Supreme Court held that such offences are not private in nature and have a serious impact on the society.

11. The rape is not an offence against the person alone, but it is against society – in legal terms the victim gets a right in rem – which will entail the State to take necessary measures to fend the victim and ameliorate them. The Courts have to take a victim-sensitive approach and not pronounce verdicts that could infringe upon the victim's rights while being under the influence of various cultural or gender biases which could seriously jeopardise the credibility of the judiciary. In a country like India where religious practices are centered around deities who are women, it must recognise the strength of this gender and take all measures to show unwavering respect to uphold their mental as well as bodily integrity, rather than treating them as mere chattels of men.

12. The Supreme Court in *State of M.P. v. Laxmi Narayan, (2019) 5 SCC 588*, has held that whether an FIR is quashable or not would depend upon the facts and circumstances of each case and while considering that

question, the Court has to apply its mind to (i) whether the crime is one against the society or against an individual alone, nature of the dispute, (ii) seriousness and how the crime was committed (iii) whether offence(s) is one under a special statute (iv) stage of proceedings and how the accused managed to compromise with the complainant.

13. In view of nature of offences alleged in the present case, the power under Section 482 Cr.P.C. cannot be used to quash the proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. In cases of this nature, the fact that in view of compromise entered into between parties, the chance of conviction is remote and bleak also cannot be a ground to terminate the investigation and quash FIR and all the proceedings emanating therefrom by invoking the power under Section 482 Cr.P.C. In such circumstances, impugned FIR does not call for any interference.

14. For the reasons stated above, instant petition is without any merit and is, accordingly, **dismissed** along with Bail Applications. Interim direction(s) are vacated.

15. Respondents are free to present challan before the court of competent jurisdiction. The petitioners shall be at liberty to approach the court concerned for grant of bail, which shall be decided on its own merits and in accordance with law.

(Vinod Chatterji Koul)
Judge

Srinagar

13.02.2025

Ajaz Ahmad, Secretary

Whether approved for reporting? Yes/No.