Supreme Court of India
The State Of Madhya Pradesh vs Laxmi Narayan on 5 March, 2019
Author: M Shah

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.349 OF 2019

The State of Madhya Pradesh ..Appellant

Versus

Laxmi Narayan and others ..Respondents

With
CRIMINAL APPEAL NO. 350 OF 2019

JUDGMENT

M.R. SHAH, J.

Criminal Appeal No.349 of 2019 A two Judge bench of this Court vide its order dated 08.09.2017, in view of the apparent conflict between the two decisions of this Court in the cases of Narinder Singh vs. State of Punjab (2014) 6 SCC 466 and State of Rajasthan vs. Shambhu Kewat (2014) 4 SCC 149, has referred the matter to a Bench of three Judges, and that is how the Signature Not Verified matter is placed before a Bench of three Judges. Digitally signed by ASHWANI KUMAR Date: 2019.03.05 17:51:51 IST Reason:

1.1 Vide order dated 19.11.2018, since the same question of law is involved, this Court tagged the connected appeal with the main appeal.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 7.10.2013 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Miscellaneous Criminal Case No. 8000/2013, by which the High Court has allowed the said application, preferred by the respondents herein/original accused (hereinafter referred to as the 'Accused'), and in exercise of its powers under Section 482 of the Code of Criminal Procedure, has quashed the proceedings against the accused for the offences punishable under Sections 307 and 34 of the IPC, relying upon the decision of this Court in the case of Shiji @ Pappu & others vs. Radhika and another (2011) 10 SCC 705, the State of

Madhya Pradesh has preferred the present appeal.

2.1 Office report dated 18.08.2017 indicates that service of show cause notice on the respondents is complete, and respondent nos. 1 to 3 are represented by Ms. Mridula Ray Bhardwaj, Advocate, but during the course of hearing, nobody appeared for the respondents.

3. The facts leading to this appeal are, that an FIR was lodged against the respondents herein and two unknown persons at Police Station Raun, District Bhind, for the offences punishable under Sections 307 and 34 of the IPC, which was registered as Crime No.36/13. It was alleged that on 03.03.2013 at about 9:30 p.m., the complainant – Charan Singh, who is an operator of LNT machine is extracting sand of Sindh River at Indukhi Sand Mine and at that time firing from other side of river started and the counter firing from this side also started then he heard that take away your machine from here. It is alleged that some people came there from which Sanjeev (respondent no.2 herein), Lature (respondent no.1 herein), Sant Singh (respondent no.3 herein) and two unknown persons came near to the complainant and his machine and told him to run away, then somebody told to Sanjeev (respondent no.2 herein) to fire and then Sanjeev fired on the complainant and then they ran away. The complainant fell from the machine. The bullet hit the complainant on elbow of right hand. Somehow the complainant managed to reach the village and a person called a car and admitted the complainant in District Hospital.

3.1 That on 04.03.2013, the duty doctor in the District Hospital informed the police and on the basis of the statement of the complainant, a Dehati Nalishi bearing No. 0/13 was registered under Sections 307 and 34 of the IPC.

3.2 That the medical examination of the injured complainant was conducted at District Hospital and five injuries were found on his body and injuries nos. 1 to 4 were opined to be caused by fire arm and injury no.5 was advised for x-ray.

3.3 That on 05.03.2013, the police reached on the spot and prepared spot map; statement of witnesses were recorded under Section 161 of the Cr.P.C. and the police seized simple soil, blood stained soil and other articles from the spot of the incident and prepared their seizure memos.

3.4 That the accused filed Miscellaneous Criminal Case No. 8000 of 2013 under Section 482 of Cr.P.C. before the High Court of Madhya Pradesh, Bench at Gwalior for quashing the criminal proceedings against the accused arising out of the FIR, on the sole ground of a compromise arrived at between the accused and the complainant.

4. That, by the impugned judgment and order, the High Court, in exercise of its powers under Section 482 of Cr.P.C., has quashed the criminal proceedings against the accused solely on the ground that the accused and the complainant have settled the disputes amicably. While quashing the criminal proceedings against the accused, the High Court has considered and relied upon the decision of this Court in the case of Shiji (supra).

5. Feeling aggrieved and dissatisfied by the impugned judgment and order, quashing the criminal proceedings against the accused for the offences punishable under Sections 307 and 34 of the IPC, the State of Madhya Pradesh has preferred the present appeal.

6. Learned advocate appearing on behalf of the State of Madhya Pradesh has vehemently submitted that the High Court has committed a grave error in quashing the FIR which was for the offences under Sections 307 and 34 of the IPC.

6.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellant-State that in the present cases the High Court has quashed the FIR mechanically and solely on the basis of the settlement/compromise between the complainant and the accused, without even considering the gravity and seriousness of the offences alleged against the accused persons.

6.2 It is further submitted by the learned counsel appearing on behalf of the appellant-State that while exercising the powers under Section 482 of the Cr.P.C. and quashing the FIR, the High Court has not at all considered the fact that the offences alleged were against the society at large and not restricted to the personal disputes between the two individuals.

6.3. It is further submitted by the learned counsel appearing on behalf of the appellant-State that the High Court has misread the decision of this Court in the case of Shiji (supra), while quashing the FIR. It is vehemently submitted by the learned counsel that the High Court ought to have appreciated that in all the cases where the complainant has compromised/entered into a settlement with the accused, that need not necessarily mean resulting into no chance of recording conviction and/or the entire exercise of a trial destined to be exercise of futility. It is vehemently submitted by the learned counsel appearing on behalf of the appellant-State that in a given case despite the complainant may not support in future and in the trial in view of the settlement and compromise with the accused, still the prosecution may prove the case against the accused persons by examining the other witnesses, if any, and/or on the basis of the medical evidence and/or other evidence/material. It is submitted that in the present cases the investigation was in progress and even the statement of the witnesses was recorded and the medical evidence was also collected. It is submitted that therefore in the facts and circumstances of the case, the High Court has clearly erred in considering and relying upon the decision of this Court in the case of Shiji (supra). 6.4 It is further submitted by the learned counsel appearing on behalf of the appellant-State that the accused were hard core criminals and many criminal cases were registered against them and they are a serious threat to the society. It is submitted that all these aforesaid circumstances and the conduct on the part of the accused were required to be considered by the High Court while quashing the FIR in exercise of its inherent powers under Section 482 of the Cr.P.C., and more particularly when the offences alleged were against the society at large, namely, attempt to murder, which is a non-compoundable offence. In support of his submissions, learned counsel for the appellant-State has placed reliance on the decisions of this Court in the cases of Gian Singh vs. State of Punjab (2012) 10 SCC 303; State of Rajasthan vs. Shambhu Kewat, (2014) 4 SCC 149; State of Madhya Pradesh vs. Deepak (2014) 10 SCC 285; State of Madhya Pradesh vs. Manish (2015) 8 SCC 307; J.Ramesh Kamath vs. Mohana Kurup (2016) 12 SCC 179; State of Madhya Pradesh vs. Rajveer Singh (2016) 12 SCC 471; Parbatbhai AAhir vs. State of Gujarat (2017) 9 SCC 641; and 2019 SCC Online SC

7, State of Madhya Pradesh vs. Kalyan Singh, decided on 4.1.2019 in Criminal Appeal No. 14/2019, State of Madhya Pradesh vs. Dhruv Gurjar, decided on 22.02.2019 in Criminal Appeal @ SLP(Criminal) No.9859/2013.

6.5 Making the above submissions and relying upon the aforesaid decisions of this Court, learned counsel appearing on behalf of the appellant-State has prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court quashing and setting aside the FIR, in exercise of its inherent powers under Section 482 of the Cr.P.C.

7. As observed hereinabove, nobody appeared on behalf of the respondents – accused.

8. We have heard the learned counsel for the appellant at great length.

9. At the outset, it is required to be noted that in the present appeals, the High Court in exercise of its powers under Section 482 of the Cr.P.C. has quashed the FIR for the offences under Sections 307 and 34 of the IPC solely on the basis of a compromise between the complainant and the accused. That in view of the compromise and the stand taken by the complainant, considering the decision of this Court in the case of Shiji (supra), the High Court has observed that there is no chance of recording conviction against the accused persons and the entire exercise of a trial would be exercise in futility, the High Court has quashed the FIR.

9.1 However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 of the Cr.P.C. From the impugned judgment and order, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgment and order passed by the High Court, it appears that the High Court has mechanically quashed the FIR, in exercise of its powers under Section 482 Cr.P.C. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in the case of State of Maharashtra vs. Vikram Anantrai Doshi, (2014) 15 SCC 29, the Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the FIR by the High Court in the present case for the offences under Sections 307 and 34 of the IPC, and that too in exercise of powers under Section 482 of the Cr.P.C. is just contrary to the law laid down by this Court in a catena of decisions.

9.2 In the case of Gian Singh (supra), in paragraph 61, this Court has observed and held as under:

> "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."
9.3 In the case of Narinder Singh vs. State of Punjab (2014) 6 SCC 466, after considering the decision in the case of Gian Singh (supra), in paragraph 29, this Court summed up as under:

> "29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. 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.

29.2. 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. 29.3. 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 the 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. 29.4. On the other hand, those criminal cases having overwhelmingly and predominantly 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. 29.5. 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.

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/delegate 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." 9.4 In the case of Parbatbhai Aahir (supra), again this Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Considering a catena of decisions of this Court on the point, this Court summarised the following propositions:

> "(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
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> (2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
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> (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate. (6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such

offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. (7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and (10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance." 9.5 In the case of Manish (supra), this Court has specifically observed and held that, when it comes to the question of compounding an offence under Sections 307, 294 and 34 IPC, by no stretch of imagination, can it be held to be an offence as between the private parties simpliciter. It is observed that such offences will have a serious impact on the society at large. It is further observed that where the accused are facing trial under Sections 307 read with Section 34 IPC, as the offences are definitely against the society, accused will have to necessarily face trial and come out unscathed by demonstrating their innocence.

9.6 In the case of Deepak (supra), this Court has specifically observed that as offence under Section 307 IPC is non-compoundable and as the offence under Section 307 is not a private dispute between the parties inter se, but is a crime against the society, quashing of the proceedings on the basis of a compromise is not permissible. Similar is the view taken by this Court in a recent decision of this Court in the case of Kalyan Singh (supra) and Dhruv Gurjar (supra).

10. Now so far as the decision of this Court in the case of Narinder Singh (supra) is concerned, this Court in paragraph 29.6 admitted that the 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, this Court further observed that 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. Its further corroboration with the medical evidence or other evidence is to be seen, which will be possible during the trial only. Hence, the decision of this case in the case of Narinder Singh (supra) shall be of no assistance to the accused in the present case.

11. Now so far as the reliance placed upon the decision of this Court in the case of Shiji (supra), while quashing the FIR by observing that as the complainant has compromised with the accused, there is no possibility of recording a conviction, and/or the further trial would be an exercise in futility is

concerned, we are of the opinion that the High Court has clearly erred in quashing the FIR on the aforesaid ground. It appears that the High Court has misread or misapplied the said decision to the facts of the cases on hand. The High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction. Such observations are presumptive and many a time too early to opine. In a given case, it may happen that the prosecution still can prove the guilt by leading cogent evidence and examining the other witnesses and the relevant evidence/material, more particularly when the dispute is not a commercial transaction and/or of a civil nature and/or is not a private wrong. In the case of Shiji (supra), this Court found that the case had its origin in the civil dispute between the parties, which dispute was resolved by them and therefore this Court observed that, 'that being so, continuance of the prosecution where the complainant is not ready to support the allegations...will be a futile exercise that will serve no purpose'. In the aforesaid case, it was also further observed 'that even the alleged two eyewitnesses, however, closely related to the complainant, were not supporting the prosecution version', and to that this Court observed and held 'that the continuance of the proceedings is nothing but an empty formality and Section 482 Cr.P.C. can, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below. Even in the said decision, in paragraph 18, it is observed as under:

> "18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.

The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked." 11.1 Therefore, the said decision may be applicable in a case which has its origin in the civil dispute between the parties; the parties have resolved the dispute; that the offence is not against the society at large and/or the same may not have social impact; the dispute is a family/matrimonial dispute etc. The aforesaid decision may not be applicable in a case where the offences alleged are very serious and grave offences, having a social impact like offences under Section 307 IPC. Therefore, without proper application of mind to the relevant facts and circumstances, in our view, the High Court has materially erred in mechanically quashing the FIR, by observing that in view of the compromise, there are no chances of recording conviction and/or the further trial would be an exercise in futility. The High Court has mechanically considered the aforesaid decision of this Court in the case of Shiji (supra), without considering the relevant facts

and circumstances of the case.

12. Now so far as the conflict between the decisions of this Court in the cases of Narinder Singh (supra) and Shambhu Kewat (supra) is concerned, in the case of Shambhu Kewat (supra), this Court has noted the difference between the power of compounding of offences conferred on a court under Section 320 Cr.P.C. and the powers conferred under Section 482 Cr.P.C. 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 Cr.P.C. 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 proceedings or criminal complaint under Section 482 Cr.P.C. 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 the case of Narinder Singh (supra), the very Bench ultimately concluded in paragraph 29 as under:

> "29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. 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.

29.2. 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. 29.3. 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 the 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. 29.4. On the other hand, those criminal cases having overwhelmingly and predominantly 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. 29.5. 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.

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/delegate 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."

13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

> i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can

be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved 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;

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) 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/delegate 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 paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) 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 impart 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.

14. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the

conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused.

15. In view of the above and for the reasons stated, the present appeal is allowed. The impugned judgment and order dated 07.10.2013 passed by the High Court in Miscellaneous Criminal Case No. 8000 of 2013 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law. Criminal Appeal No.350 of 2019

16. So far as Criminal Appeal arising out of SLP 10324/2018 is concerned, by the impugned judgment and order, the High Court has quashed the criminal proceedings for the offences punishable under Sections 323, 294, 308 & 34 of the IPC, solely on the ground that the accused and the complainant have settled the matter and in view of the decision of this Court in the case of Shiji(supra), there may not be any possibility of recording a conviction against the accused. Offence under Section 308 IPC is a non-compoundable offence. While committing the offence, the accused has used the fire arm. They are also absconding, and in the meantime, they have managed to enter into a compromise with the complainant. Therefore, for the reasons stated above, this appeal is also allowed, the impugned judgment and order dated 28.05.2018 passed by the High Court in Miscellaneous Criminal Case No. 19309/2018 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law.

.....J.

[A.K. SIKRI] .....J.

[S. ABDUL NAZEER]

NEW DELHI;
MARCH 05, 2019.

…….J.
[M.R. SHAH]