

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 14th OF AUGUST, 2023

MISC. CRIMINAL CASE No. 19379 of 2023

BETWEEN:-

1. VISHAMBHAR PRASAD
DWIVEDI S/O SHRI
RAMNATH DWIVDI,
AGED ABOUT 57 YEARS,
R/O 1820/3, OLD
KANCHANPUR
INDRAPRASTH
COLONY, ADHARTAL
JABALPUR (M.P.)
2. SHIVKUMAR DWIVEDI
S/O VISHAMBHAR
PRASAD DWIVEDI,
AGED ABOUT 32 YEARS,
OCCUPATION: PRIVAT
JOB, R/O GRAM GHANA,
THANA KHAMRIYA,
JABALPUR (M.P.)

.....PETITIONERS

(BY SHRI OM SHANKAR PANDEY - ADVOCATE)

AND

1. THE STATE OF
MADHYA PRADESH
THROUGH POLICE
STATION KHAMARIYA,
JABALPUR (M.P.)
2. SMT LALITA DWIVEDI
W/O SHIVKUMAR
DWIVEDI R/O GRAM
GHANA, PS KHAMRIYA,
JABALPUR (M.P.)

.....RESPONDENTS

(SMT. RANJANA AGNIHOTRI – DEPUTY GOVERNMENT ADVOCATE FOR RESPONDENT NO.1/STATE AND SHRI R.B. KUSHWAHA – ADVOCATE FOR RESPONDENT NO.2)

RESERVED ON : 11.08.2023
PRONOUNCED ON : 14.08.2023

This petition having been heard and reserved for order coming on for pronouncement this day, the court passed the following:

ORDER

1. This petition has been filed by applicants namely Vishambhar Prasad Dwivedi and Shivkumar Dwivedi under the provision of Section 482 Cr.P.C. for quashing the FIR and the consequent proceedings pending before 25th Additional Sessions Judge, Jabalpur in Session Trial No.391/2020, in which the applicants are facing trial for the offence of under Section 326/34 of IPC.
2. The facts of prosecution case, as set forth, in the final report filed under Section 173 Cr.P.C., which is placed on the record of this case as Annexure A-1, can be summed up that on 11th December 2019, complainant Surbhi Thakur was in the house of her sister Lalita Dwivedi, who was being assaulted and abused by the applicants. When Lalita asked the applicants not to use abusive words, her husband applicant Shivkumar gave her an axe blow on her head and the backside of neck. The complainant intervened, but she too was attacked. The applicants were threatening that they would kill Lalita if she didn't leave the house. The complainant got the FIR registered. Both the injured persons were medically examined. An offence under Section 326 of 1PC was added in the light of nature of injury caused to Lalita Dwivedi with a hard and sharp object and the charge-sheet was filed.

3. Applicants have filed the certified copy of order dated 11th of April 2023 passed in session trial case pending against them, in which the application for compromise and also the application for permission to compromise filed under Section 320(1) and 320 (2) of Cr.P.C. were considered. These applications were filed by injured Lalita Dwivedi, in which she had claimed that a compromise was arrived at between the parties, therefore, she did not want to proceed with the trial. The learned Sessions Court allowed the application in reference to offence under Sections 294, 323/34 and 506-II of IPC for being compoundable offences; the said order suggests that applicant Shivkumar Dwivedi is facing trial under Section 326 IPC and applicant Vishambhar Pd. Dwivedi is facing trial for the offence under Section 326/34 of IPC, for which the trial would continue as these offences or non-compoundable in nature. The status of case on CIS shows that the case is now pending at the stage of accused's statement.

4. In the application pending before this Court, it is claimed that the parties are the close relatives and they have reached to a compromise and now the whole of the family is living together along with the kids. It is, therefore, prayed that the proceedings pending before the trial court, be quashed in the light of compromise arrived at between the parties and the file under Section 482 Cr.P.C. be allowed. To support the facts stated in the petition, I.A. No.10341/2023 has been filed on behalf of Lalita Dwivedi under Section 320(5) of Cr.P.C. claiming that the parties have settled the dispute, therefore, the applicant who was the injured party does not want to continue the case and prays that the accused may be acquitted in the light of this application. The parties were referred to appear before Registrar (J-II) for verification of compromise arrived at between them. The report dated 12th May 2023 is on record, which claims that complainant and injured, namely,

Lalita and Surbhi have amicably resolved the dispute with the applicants and now the matter stands fully and finally settled. It is mentioned therein that the compromise appears to be free from any threat, inducement or pressure and is voluntarily entered into by the parties with their freewill and volition.

5. There cannot be any dispute on the fact that the applicants are facing trial for an offence, which is non-compoundable in nature. In Cr.A.No.1489 of 2012 (**Ramgopal vs. State of Madhya Pradesh**), the Supreme Court of India has held that the cases which are non-compoundable cannot be compounded by a criminal Court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the Court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 of Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons, can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice. It is further held that the observation made by the High Court that it does not have power to compound a non-compoundable offence, is in ignorance of its inherent powers under Section 482 of Cr.P.C. and is, thus, unsustainable.

6. A three Judges' Bench of Apex Court in the case of **State of Madhya Pradesh vs. Laxmi Narayan & Ors.** (2019)5 SCC 688 has held as under:-

"(1) 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;

(2) 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;

(3) Similarly, such power is not to be exercised for the offences under the special statutes 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."

7. In the light of legal propositions as manifested in the aforesaid judgment, this Court is of the view that though the offence of Section 326 of IPC is not compoundable under law, but the circumstances of present case reveal that the alleged offence was committed on account of a family dispute and is not of a heinous nature crime, which would affect the society at large. The crime in question is private in nature, between the members of a family, who have now settled their dispute and have resumed their familial ties. In the circumstances, it appears to be a fit case to exercise the power under Section 482 Cr.P.C. because letting the dispute hang on, there are chances that relationship between the parties is disrupted again, which may affect the future of family and also of its members, including the children. In view of legal and factual circumstances of the case, the petition is allowed and the criminal proceedings pending against applicants in Session Trial

No.391/2019 before 25th Additional Sessions Judge, Jabalpur, based on Crime No.308/2019 registered at Police Station, Kamariya district Jabalpur is quashed in so far as the offence of Section 326 of IPC is concerned.

8. A copy of this order be sent to the concerned trial Court for information and necessary compliance.

(ANURADHA SHUKLA)
JUDGE