

ITEM NO.4

COURT NO.9

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6948/2013

(Arising out of impugned final judgment and order dated 01/02/2012 in CRLA No. 1005/2007 passed by the High Court Of Chhatisgarh At Bilaspur)

GYANCHANDRA VISHWAKARMA

Petitioner(s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

(with appln. (s) for bail, exemption from filing O.T. and office report)

Date : 26/08/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s)

Mr. Amlan Kumar Ghosh ,Adv.

For Respondent(s)

Mr. Atul Jha,Adv.

Mr. Sandeep Jha,Adv.

Mr. Dharmendra Kumar Sinha ,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The petitioner herein is convicted by the trial Court for an offence punishable under Sections 364A, 363 and 365 read with Section 34 of the Indian Penal Code. The offence pertains to kidnapping of a minor boy named Babu Gyan Prakash aged about 11 years and demand of ransom of Rs.20,00,000/- (Rupees Twenty Lakhs only). The prosecution successfully proved the aforesaid charges against the petitioner.

Learned counsel for the petitioner did not question the findings of the courts where the petitioner has been convicted of the aforesaid offences. However, his only submission was that after the conviction by the trial court, the appeal was filed before the High Court and during the pendency of the appeal, the parties settled the matter. He submitted that parties are related to each other and due to some business rivalry, the petitioner had committed the aforesaid act. He thus pleaded that in such circumstances, when the parties had buried the hatchet, the High Court should have acquitted the petitioner.

We find from the impugned judgment of the High Court that taking note of the aforesaid plea of settlement between the parties, the High Court observed that the offence under Section 364A of the IPC was not compoundable, and therefore, did not interfere with the conviction. However, the High Court reduced the sentence to the minimum.

Before us, it was argued that the High Court should have acted upon such compromise and release the petitioner. We do not find such an argument to be tenable in law. The circumstances of the case have already been pointed out above. It is a case of kidnapping of a minor boy for ransom. After the kidnapping, the boy was subjected to physical assault. The medical examination of the boy was conducted and as per the said Medical Record, injuries were found on his person. In such a serious offence, when conviction had already been recorded by the trial Court, there was

no question of compounding thereof. This aspect has been discussed in detail in a recent judgment of this Court in Narinder Singh & Ors. vs. State of Punjab & Anr. (2014) 6 SCC 466, after analysing previous law. The principles to be applied had been deduced in the above mentioned judgment in the following manner:

"31. 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:

(I) 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.

(II) 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.

(III) 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 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.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is 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 later 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.

(VII) 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 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."

Since the present offence is heinous one and conviction has already been recorded, compounding at this stage is not warranted. This special leave petition is dismissed.

[O.P. SHARMA]
COURT MASTER

[INDU BALA KAPUR]
COURT MASTER