

firm has no individual identity. It is always associated with its proprietor and in case of proprietorship concern, question of vicarious liability does not arise and only proprietor of the proprietorship concern will be liable, whether proprietorship concern is arrayed as accused through it proprietor or proprietor himself is arrayed as a party. In both the cases there will be individual liability of the proprietor and proprietorship concern has no different identity. It is used only for the business purposes; the real identity is its proprietor.

18. In view of the reason mentioned in the forgoing paragraph, it is not necessary to implead the applicant separately as accused. He can be prosecuted by impleading his firm on whose behalf the cheque in question was issued. Therefore, the first submission of the applicant that the impugned proceeding is bad in the eyes of law as **he was not impleaded as party is misconceived, hence, rejected.**

19. So far as the second issue raised by counsel for the applicant that on bouncing of the cheque of part of liability of Rs.4 Lakh, the applicant has filed the complaint No. 4501 of 2021 and for entire amount of Rs.29,50,000/-, the impugned proceeding has been initiated is concerned, the applicant appears to be correct, but this ground can be raised by the applicant **before the trial court and on that ground the present proceeding cannot be quashed.**

20. So far as the third issue raised by the counsel for the applicant that admittedly the demand notice was served upon the applicant on 9.3.2021, but the complaint was filed on 22.3.2021 is

concerned, that appears to be correct because for taking cognizance the complaint should have been filed after expiry of 15 days from the service of demand notice. In the present case admittedly the demand notice was served upon the applicant on 9.3.2021. Therefore, the complaint could have been filed after 24.3.2021 but the complaint was filed on 22.3.2021. Therefore, the complaint is premature.

21. In view of the above, the present application is partly allowed only on the ground that the complaint is premature, **therefore, the proceeding of Complaint Case No. 4501 of 2021 is hereby quashed.**

22. However, opposite party No.2 is at liberty to file fresh complaint in accordance with law.

23. With the aforesaid observation, the application is **disposed of.**

(2024) 12 ILRA 13

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 11.12.2024

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Application U/S 482 No. 10823 of 2024

Shyam Lal Dhadhaniya ...Applicant

Versus

State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Abhishek Tripathi

Counsel for the Opposite Parties:

G.A.

Criminal Law- Criminal Procedure Code,1973 — Section 482 —Indian Penal Code, 1860 - Sections 409, 420, 467, 468, 471, 323, 504 & 506 - Quashing of criminal proceedings — Compromise between parties — Offences under IPC — Some offences compoundable, others not — Dispute private in nature — Continuance of trial found to be futile in view of verified compromise — Entire proceedings quashed—Application allowed. (Paras 14 to 17)

HELD:

While considering the question with regard to the inherent powers of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which, he is allegedly involved, is not compoundable under Section 320 of the Code, the Hon'ble Supreme Court in Para 57 of the judgment in case of Gian Singh (supra) has held 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, 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 consequences may be acquittal or dismissal of indictment. (Para 14)

From the perusal of record, it appears that the real dispute between the parties is relating to property dispute, which is private in nature. The present criminal proceedings arose between the parties is not a formal consequence of the real occurrence. The present criminal prosecution arose incidentally between the parties and is not a natural consequence of the real occurrence. It is apparent that the parties have entered into a

compromise and they further appear to have settled their dispute amicably. The opposite party no.2 who would be a key prosecution witness, if the trial were to proceed, has declared his unequivocal intent to turn hostile at the trial. In these circumstances, it is apparent that the merits and truth apart, the proceedings in trial, if allowed to continue, may largely be a waste of precious time by the learned court below. (Para 15)

The court cannot remain oblivious to the hard reality that the facts of the present case and other similar cases present where, though the allegations made in the FIR do appear to contain the ingredients of a criminal offence, however, in view of settlement having been reached, the chances of conviction are not only bleak but, if such trials are allowed to continue along with all other trials which are piled up, practically in all criminal courts in the St., the continuance of trials in cases such as the instant case may only work to the huge disadvantage of other cases where litigants are crying for justice. (Para 16)

Thus, looking at the prevalent tendencies in the society, a more pragmatic, and less technical approach commends to the court to let some criminal prosecutions such as the present case be dropped, for the sake of more effective, efficient and proper trial in other cases where the litigants appear to be serious about their rights and more consistent in their approach. (Para 17)

Application allowed. (E-14)

List of Cases cited:

1. Narindra Singh & anr. Vs St. of Pun. & anr. reported in (2014) 6 SCC 466
2. Parbatbhai Aahir Vs St. of Guj. reported in (2017) 9 SCC 641
3. St. of M.P. Vs Laxmi Narayan & ors. reported in (2019) 5 SCC 688
4. Sanesh Thakur & ors. Vs St. of U.P. & anr. passed in Application u/s 482 No. 20982 of 2017 decided on 17.03.2023.

5. Gian Singh Vs St. of Punj. & anr. reported in (2012) 10 SCC 303

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard learned counsel for the applicant, learned A.G.A. for the State-respondents and perused the record.

2. This application under Section 482 has been filed challenging further proceedings of Case No. 1888 of 2015 (State of U.P. v. Ram Kishan Dhahaniya and others) arising out of Case Crime No. 255 of 2014, under Section 409, 420, 467, 468, 471, 323, 504 & 506 of I.P.C., Police Station Fazalganj, District Kanpur Nagar, pending before Metropolitan Magistrate, Court No. II, Kanpur Nagar including the charge sheet No. 47 of 2015 submitted on 20.05.2015 as well as cognizance and order issuingailable warrant dated 01.06.2015 passed by Additional Chief Metropolitan Magistrate, Court No. VIII, Kanpur Nagar.

3. Brief facts of the case are that on 05.12.2014, opposite party no. 2 lodged First Information Report against the applicant and six others for offenses punishable under Section 409, 420, 467, 468, 471, 323, 504 & 506 I.P.C. at Police Station Fazalganj, District Kanpur Nagar in Case Crime No. 255 of 2014.

4. After investigation, police submitted the charge sheet No. 47 of 2015 under Section 409, 420, 467, 468, 471, 323, 504 & 506 I.P.C. against Ram Krishna Dhadhaniya, Gopi Kishan, Shyamlal, Amit & Vinit. Thereafter, cognizance was taken by the Additional Metropolitan Magistrate, Kanpur Nagar and the accused persons were summoned including the applicant.

5. On 04.08.2023, a compromise has been taken place between the applicant and opposite party no. 2. The compromise was filed before the court below at Kanpur Nagar where the case is pending. Thereafter, the present application under Section 482 has been filed to quash the proceedings against the applicant on the basis of compromise taken between the parties.

6. This Court by order dated 12.04.2024, has directed for verification of the compromise and for submission of report on the aforesaid compromise by the court below. In compliance of the aforesaid order passed by this Court, Chief Metropolitan Magistrate, Court No. 2, Kanpur Nagar has submitted its report dated 05.07.2024 wherein compromise between the parties has been verified.

7. It is pertinent to mention here that father of the present applicant i.e. Ram Kishna Dhadhaniya, one of the co-accused filed application under Section 482 No. 30532 of 2015 (Ram Kishan Dhadhaniya v. State of U.P. and another) wherein this Court by order dated 09.10.2015 stayed further proceedings of the case against the father applicant i.e. Ram Kishna Dhadhaniya and later on Ram Kishan Dhadhaniya died consequently, the Application U/s 482 No. 30532 of 2015 has been abated. The other co-accused namely Amit, Gopi Kishan and Vinit filed another Application under Section 482 No. 31704 of 2015 (Amit and two others v. State of U.P. and another). In the aforesaid application, further proceedings of Case No. 1888 of 2015 was directed to be stayed by order dated 27.10.2015 and by order dated 02.11.2023 the application has been allowed and the proceedings have been quashed.

8. Since the two other applications under Section 482 regarding the same case and F.I.R. qua the co-accused persons, have already been decided, no purpose would be served in keeping this petition pending after verification of compromise.

9. Learned counsel for the applicants submitted that as the dispute has been settled amicably and compromise entered into the parties has been verified before the court below, the present application under Section 482 Cr.P.C. be allowed and the proceedings of Case No. 1888 of 2015 (State of U.P. v. Ram Kishan Dhahaniya and others) arising out of Case Crime No. 255 of 2014, under Section 409, 420, 467, 468, 471, 323, 504 & 506 of I.P.C., Police Station Fazalganj, District Kanpur Nagar, be quashed.

10. Learned counsel for the applicant had relied upon the judgment of Supreme Court in case of **Narindra Singh and another Vs. State of Punjab and another reported in (2014) 6 SCC 466, Parbatbhai Aahir Vs. State of Gujarat reported in (2017) 9 SCC 641, State of Madhya Pradesh Vs. Laxmi Narayan and others reported in (2019) 5 SCC 688** and the judgment of this Court in case of **Sanesh Thakur and 3 others Vs. State of U.P. and another** passed in Application u/s 482 No. 20982 of 2017 decided on 17.03.2023.

11. Learned A.G.A. has opposed the prayer made in the application but could not deny the fact that the offence under Sections 323, 504 & 506 of I.P.C. are compoundable and Section 420 I.P.C. is compoundable with the permission of the court in view of the table appended to Section 320 (2) of Cr.P.C. It is further submitted by learned A.G.A. that Sections

409, 467, 468 & 471 I.P.C. are not compoundable, and therefore, present application cannot be decided on the basis of compromise between the parties.

12. In reply, it has been contended by learned Counsel for the applicant that there is no impediment in exercise of powers of the High Court under Section 482 Cr.P.C. in quashing criminal proceedings where the parties have settled their dispute amicably.

13. It is correct that Sections 409, 467, 468 & 471 I.P.C. are not compoundable offences mentioned in either of the tables referred in Section 320 Cr.P.C. In case of **Gian Singh Vs. State of Panjab and another** reported in **(2012) 10 SCC 303**, the Hon'ble Supreme Court has held that Section 320 of the Code articulates the public policy with regard to compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the Court and certain offences can be compounded only with the permission of Court. The offences punishable under the special statutes are not covered by Section 320.

14. While considering the question with regard to the inherent powers of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which, he is allegedly involved, is not compoundable under Section 320 of the Code, the Hon'ble Supreme Court in Para 57 of the judgment in case of Gian Singh (supra) has held 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, 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 consequences may be acquittal or dismissal of indictment.

15. From the perusal of record, it appears that the real dispute between the parties is relating to property dispute, which is private in nature. The present criminal proceedings arose between the parties is not a formal consequence of the real occurrence. The present criminal prosecution arose incidentally between the parties and is not a natural consequence of the real occurrence. It is apparent that the parties have entered into a compromise and they further appear to have settled their dispute amicably. The opposite party no.2 who would be a key prosecution witness, if the trial were to proceed, has declared his unequivocal intent to turn hostile at the trial. In these circumstances, it is apparent that the merits and truth apart, the proceedings in trial, if allowed to continue, may largely be a waste of precious time by the learned court below.

16. The court cannot remain oblivious to the hard reality that the facts of the present case and other similar cases present where, though the allegations made in the

FIR do appear to contain the ingredients of a criminal offence, however, in view of settlement having been reached, the chances of conviction are not only bleak but, if such trials are allowed to continue along with all other trials which are piled up, practically in all criminal courts in the state, the continuance of trials in cases such as the instant case may only work to the huge disadvantage of other cases where litigants are crying for justice.

17. Thus, looking at the prevalent tendencies in the society, a more pragmatic, and less technical approach commends to the court to let some criminal prosecutions such as the present case be dropped, for the sake of more effective, efficient and proper trial in other cases where the litigants appear to be serious about their rights and more consistent in their approach.

18. Considering the facts and circumstances of the case and submissions advanced by learned counsel for the parties, regarding the compromise entered into between the parties and taking all these factors into consideration cumulatively, the compromise between the parties be accepted and further taking into account the legal position as laid down by the Apex Court in case of **Gian Singh Vs. State of Punjab and another (supra)**, **Narindra Singh and others Vs. State of Punjab and another (supra)**, **Parbatbhai Ahir Vs. State of Gujarat (supra)**, **State of Madhya Pradesh Vs. Laxmi Narayan and others (supra)** and **Sanesh Thakur and 3 others Vs. State of U.P. and another (supra)**, the entire proceedings of the entire proceeding of Criminal Case No. 1888 of 2015 (State of U.P. v. Ram Kishan Dhahaniya and others) arising out of Case Crime No. 255 of 2014, under Section 409, 420, 467, 468, 471, 323, 504 & 506 of

I.P.C., Police Station Fazalganj, District Kanpur Nagar, pending in the court of Additional Chief Metropolitan Magistrate, Court No. VIII, Kanpur Nagar, are hereby quashed.

19. The present Application u/s 482 thus is **allowed**, subject to payment of cost to be deposited by the parties before the High Court Legal Services Committee, Allahabad. Such cost has to be imposed to let the parties (in this case) in particular and the society in general know that the courts cannot remain a mute spectator to unscrupulous and errant behaviour of certain persons. A society that will allow its members to misuse its courts, will ultimately suffer and pay a huge cost. Litigants, both genuine and bogus, will always continue to stand in a common queue. The courts have no mechanism to pre-identify and distinguish between the genuine and the bogus litigants. That differentiation emerges only after the hearing is concluded in any case and hearing requires time. In fact, even if the courts were to take punitive action against a bogus litigant, then, being bound by rules of procedure and fairness, such cases are likely to take more time than a case of two genuine litigants. Cost in the present case is quantified to Rs. 5,000/- (2,500 on each party) to be deposited before the High Court Legal Services Committee, Allahabad, within a period of three weeks from today.

(2024) 12 ILRA 18

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 13.12.2024

BEFORE

**THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Application U/S 482 No. 23721 of 2024
With
Application U/S 482 No. 28869 of 2024

Jitendra Kumar Mangla ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Bhuvnesh Kumar Singh

Counsel for the Opposite Parties:
G.A.

A. Criminal Law -Criminal Procedure Code.1973-Section 482-Negotiable Instrument Act, 1881- Section 138-quashing of proceedings related to complaints filed u/s 138 of N.I.Act for cheque dishonor-Held, the power of attorney holder cannot file a complaint u/s 138 of NI Act in their own name but can represent the payee-adequate averments in the complaint established that the power of attorney holder had sufficient knowledge of the transaction, making the proceedings valid-Hence, the complaint filed by the power of attorney holder in their own name is legally untenable-Proceedings quashed, with liberty to file a fresh complaint in compliance with legal requirements.(Para 1 to 25)

B. Complaint u/s 138 N.I. Act can be filed by the power of attorney holder of payee or holder in due course. However, the Power of Attorney holder cannot depose or verify on oath as complainant unless from the averments, including verification of the affidavit filed in support of the complaint as well as from the supporting document, it must be clear that power of attorney holder has knowledge about the fact mentioned in the complaint regarding the transaction. if the accused disputes the knowledge of the fact of the power of attorney holder or his authority, the same can be considered during the trial but the proceeding cannot be quashed on this ground. The transaction should be within the knowledge of the Power of attorney