

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 1285 of 2024.

Reserved on: 1.4.2025.

Date of Decision: 30.4.2025.

Rajesh Kumar and others ...Petitioners

Versus

State of H.P. and another ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹

For the Petitioners : Mr. Deshmiter Thakur, Advocate.

For the Respondents : Mr Prashant Sen, Deputy Advocate
General for respondents Nos. 1 to
3/State.

Mr. Rajesh Prakash, Advocate, for
respondent No.4.

Rakesh Kainthla, Judge

The petitioner has filed the present petition under Section 528 of Bhartiya Nagrik Surksha Sahinta (BNSS),2023, for quashing of FIR No. 228, dated 2.8.2022, registered at Police station Balh, District Mandi, for the commission of offences under Section 377, 498-A, 323, 355, 504, 506 and 34 Indian Penal Code (IPC). It has been asserted that the informant filed a

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

complaint against the petitioner on 2.8.2022. The matter was compromised with the intervention of the respectable Members of the Society. The informant does not want to proceed further with her complaint. Therefore, it was prayed that the present petition be allowed and the FIR No. 228 /2022 be ordered to be quashed.

2. The informant's statement was recorded on 18.3.2025, in which she stated that she had compromised the matter with the accused voluntarily without any influence from any person, and she was residing happily in her matrimonial home. She had no objection in case the petition is allowed, and the FIR is ordered to be quashed.

3. I have heard Mr. Deshmiter Thakur, learned counsel for the petitioner and Mr. Prashant Sen, learned Deputy Advocate General for respondents Nos. 1 to 3-State, and Mr. Rajesh Prakash, learned counsel for the informant.

4. Mr. Deshmiter Thakur, learned counsel for the petitioner, submitted that the parties have voluntarily compromised the matter and the informant does not want to proceed further with the matter. An offence punishable under Section 377 of the IPC cannot be committed between a husband

and wife. He prayed that the present petition be allowed and the FIR be quashed. He relied upon the judgment of the Uttarakhand High Court in *Cr. Revision No. 707 of 2023 titled Dr. Kirti Bhushan Mishra Vs State of Uttarakhand and others, decided on 19.07.2024* in support of his submission.

5. Mr. Prashant Sen, learned Dy. Advocate General for respondents Nos. 1 to 3-State submitted that the offence punishable under section 377 is an offence against society and cannot be compounded. Therefore, he prayed that the present petition be dismissed.

6. Mr. Rajesh Prakash, learned counsel for the informant, submitted that he has no objection in case the FIR is ordered to be quashed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The FIR was lodged for the commission of offences punishable under Sections 498-A, 323, 504, read with Section 34 IPC. The offences punishable under Sections 323, 504 and 34 of the IPC are compoundable as per Section 320 of the Code of Criminal Procedure (CrPC). It was laid down in *Gian Singh versus State, 2012 (10) SCC 303, Narender versus State of Punjab, 2014 (16)*

SCC 466, Vikas Singh vs. State of H.P. (2023) 1 DMC 335 (HP) and *Sanjay Kumar vs. State of H.P 2023 (1) Him L.R. 602* that the offence punishable under Section 498-A can be quashed in exercise of the inherent powers of the High Court after the compromise. Therefore, the offence punishable under Section 498-A of the IPC can be quashed by this Court.

9. It was submitted that an offence punishable under Section 377 of the IPC cannot be committed between the husband and wife. A reliance was placed upon the judgment of the Uttarakhand High Court in *Dr. Kriti Bhushan Mishra* (supra). It is difficult to accept the submission and follow the judgment of the Uttarakhand High Court with utmost humility. The Uttarakhand High Court held that an exception to Section 375 of the IPC cannot be taken out from Section 377 of the IPC. This is a clear case of judicial legislation. The legislature has not enacted any exception in section 377, and it is not permissible to incorporate an exception created under section 375 into Section 377 of the IPC by any process of interpretation. This is contrary to the plain words of the statute and impermissible in my humble opinion. Thus, the submission that there can be no offence punishable under Section 377 of the IPC between the husband and wife is rejected.

10. It was submitted that the offence punishable under Section 377 of the IPC was declared unconstitutional by the Hon'ble Supreme Court, and no FIR can be registered for the commission of the aforesaid offence. This submission is not acceptable. The Hon'ble Supreme Court held in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 that Section 377 insofar as it criminalises consensual sexual acts between adults is violative of Articles 14, 15, 19 and 21 of the Constitution of India. However, this will not affect non-consensual sexual acts against adults, all acts of carnal intercourse against minors and acts of bestiality. It was observed:-

“645.1. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution. It is, however, clarified that such consent must be free consent, which is completely voluntary in nature and devoid of any duress or coercion.

645.2. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the re-opening of any concluded prosecutions, but can certainly be relied upon in all pending matters, whether they are at the trial, appellate, or revisional stages.

645.3. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.”

11. Therefore, the declaration of unconstitutionality of Section 377 of IPC will not have any effect in the present case because, as per the informant, the act of sexual intercourse against the order of nature was done without her consent and it is not covered by the judgment of the Hon'ble Supreme Court in *Navtej Singh Johar* (supra).

12. The guidelines for quashing the FIR based on compromise were laid down by the Hon'ble Supreme Court in *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466, 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, a 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 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.

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.”(Emphasis supplied)

13. This position was reiterated in *Parbatbhai Aahir Alias Parbathbhai Bhimsinhbhai Karmur v. State of Gujrat*, (2017) 9 SCC 641, wherein it was observed:

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 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.

16.2. 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 of the Criminal Procedure Code, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in the 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.

16.4. 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.

16.5. 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 formulated.

16.6. *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.

16.7. 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.

16.8. 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.

16.9. 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 16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. 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.” (Emphasis supplied)

14. It was held in *State of M.P. v. Madanlal* (2015) 7 SCC 681, that the compromise cannot be thought of in cases of rape or attempt to rape. It was observed:

“We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of.”

15. It was held in *Ramji Lal Bairwa v. State of Rajasthan*, 2024 SCC OnLine SC 3193 that a heinous offence which affects society cannot be compromised. It was observed: -

“32. In the decision relied on by the High Court to quash the proceedings viz., *Gian Singh's case* (supra) and the decision in *Laxmi Narayan's case* (supra) in unambiguous terms this Court held that the power under Section 482, Cr. P.C. could not be used to quash proceedings based on a compromise if it is in respect of heinous offence which is not private in nature and have a serious impact on the society...”

16. The offence punishable under Section 377 of the IPC is similar to an offence punishable under Section 376 of the IPC, and similar consideration will apply to it. Since the offence punishable under Section 376 has been held to be heinous and against society, the offence punishable under Section 377 of the IPC is also to be held to be heinous and against society, which cannot be compromised by the parties and the FIR cannot be quashed while exercising inherent jurisdiction under Section 482 of Cr.PC.

17. It was submitted that the allegations regarding the commission of an offence punishable under Section 377 of the IPC are false and were introduced during the investigation. This submission will not help the petitioner. This Court cannot go into the truthfulness or otherwise of the allegations made in the

complaint. This position was laid down in *Maneesha Yadav v. State of U.P.*, 2024 SCC OnLine SC 643, wherein it was held: -

“13. As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at their face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint, even if taken at their face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of *Bhajan Lal (supra)*.

14. We may gainfully refer to the observations of this Court in the case of *Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home* (2019) 11 SCC 706: 2018 INSC 1060:

“14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of the FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]. In *Joseph Salvaraj A. v. State of Gujarat* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23], this Court while deciding the question of whether the High Court could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed: (SCC p. 63, para 16)

“16. Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same is not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [*Joeph Saivaraj A. v. State of Gujarat*, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”

18. It was laid down by the Hon'ble Supreme Court in *Dharambeer Kumar Singh v. State of Jharkhand*, (2025) 1 SCC 392: 2024 SCC OnLine SC 1894 that the Court, while exercising jurisdiction under Section 482 of CrPC, cannot conduct a mini-trial. It was observed at page 397:

“17. This Court, in a series of judgments, has held that while exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini-trial. A profitable reference can be made to the judgment in *CBI v. Aryan Singh* [*CBI v. Aryan Singh*, (2023) 18 SCC 399: 2023 SCC OnLine SC 379]. The relevant paragraph from the judgment is extracted hereunder: (SCC paras 6-7)

6. ... As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini-trial. ...

7. ... At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further

against the accused for which the accused is required to be tried or not’.”

19. A similar view was taken in *Dineshbhai Chandubhai Patel v. State of Gujarat*, (2018) 3 SCC 104: (2018) 1 SCC (Cri) 683: 2018 SCC OnLine SC 6, wherein it was observed at page 111:

“29 [Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.]. The High Court, in our view, failed to see the extent of its jurisdiction, which it possesses to exercise while examining the legality of any FIR complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can it exercise the powers like an appellate court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30 [Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.] . At this stage, the High Court could not appreciate the evidence, nor could it draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine the questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the court finds that the FIR does disclose the prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to

unearth the crime in accordance with the procedure prescribed in the Code.

32. The very fact that the High Court, in this case, went into the minutest details in relation to every aspect of the case and devoted 89 pages of judgment to quash the FIR in part led us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such an approach of the High Court.

33. The inherent powers of the High Court, which are obviously not defined as being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind, else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.

34. On perusal of the three complaints and the FIR mentioned above, we are of the considered view that the complaint and FIR, do disclose a prima facie commission of various cognizable offences alleged by the complainants against the accused persons and, therefore, the High Court instead of dismissing the application filed by the accused persons in part should have dismissed the application as a whole to uphold the entire FIR in question.”

20. A charge sheet has been filed before the Court. The learned Trial Court is seized of the matter. It was laid down by the Hon’ble Supreme Court in *Iqbal v. State of U.P.*, (2023) 8 SCC 734: 2023 SCC OnLine SC 949 that when the charge sheet has been filed, the learned Trial Court should be left to appreciate the same. It was observed:

“At the same time, we also take notice of the fact that the investigation has been completed and the charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence, particularly in the absence of any specific date, time, etc. of the alleged offences, we are of the view that the appellants should prefer a discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and the charge sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any discharge case is made out or not.”

21. No other point was urged.

22. Consequently, the present petition is partly allowed, and FIR No. 228 of 2022, registered for the commission of offences punishable under Sections 498A, 323, 355, 504, and 506 read with Section 34 of the Indian Penal Code (IPC), stands quashed whereas it will proceed for the commission of an offence punishable under Section 377 of the IPC.

23. Parties are permitted to produce a copy of this judgment, downloaded from the web page of the High Court of Himachal Pradesh before the authorities concerned, and the said authorities shall not insist on the production of a certified copy

but if required, may verify passing of the order from Website of the High Court.

(Rakesh Kainthla)
Judge

30th April, 2025
(G.M)