IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH NAHARLAGUN

Crl.Petn 83(AP)2017

1. **Shri Philip Jerang,**
   S/o Shri Bate Jerang,
   R/o Ruksin Village, P.O/P.S. Ruksin
   District East Siang, Pasighat, Arunachal Pradesh
   Contact:9402093720.

2. **Shri Tarung Tatak,**
   S/o Shri Takong Tatak,
   R/o Mori Village, P.O/P.S. Panging,
   District Siang, Arunachal Pradesh.
   Contact no. 9436888791.

3. **Shri Ponpaul Ering,**
   S/o Shri Paul Ering,
   R/o. Sille Village, P.O/P.S. Panging,
   District East Siang, Arunachal Pradesh.
   Contact No.9485231939.

4. **Shri Lama Mimi,**
   S/o Shri Lahume Mimi,
   R/o Alinye Village, P.O/P.S. Anini,
   District Dibang Valley, Arunachal Pradesh.
   Contact No. 9402400818.

.....*petitioners*

Vs

1. **The State of Arunachal Pradesh** represented through the Public Prosecutor.

.....*respondent*

By Advocates:

For the petitioners: R. Sonar

L. Tapa

T. Devi

For the respondents: Ms. M. Tang, Addl. P.P. (A.P)

:::BEFORE:::

HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO

Date of Hearing : 16.02.2018

Date of Judgment: 21.02.2018

JUDGMENT & ORDER (CAV)

Heard Mr. R. Sonar, learned counsel for the petitioner and also heard Ms. M. Tang, learned Addl. P. P. appearing for the State of Arunachal Pradesh.

1. This is an application Under Section 482 of the Cr. P. C. praying for quashing of the Char-sheet No. 05/2017, dated 30.11.2017, submitted Under Section 342/34 of the Indian Penal Code read with Section 25 of Juvenile Justice Act, corresponding to Anini Police Case No. 12/2017, dated 16.10.2017, which was registered on a complaint submitted by the petitioner No 4 against the petitioner No. 1, 2 & 3 in this application.

2. On 16.10.2017, the petitioner No. 4, father of Ms. Asina Mimi @ Shanti submitted a complaint to the Officer-In-charge of Anini Police Station in Dibang Valley District. The contents of the complain are reproduced here below:

To, *Dated 16.10.2017*

The Officer-in-Charge,
Anini Police Station,
District Dibang Valley,
Arunachal Pradesh.

Sub:- FIR against CO Philip Jerrang, Sri Ponpaul Ering JE, PWD Etalin, Shri Tarung Tatak JE, UD Hosing, Anini for illegal confinement of minor girls in the quarter of CO Philip Jerrang for one night.

Sir,

I am father of Miss Asina Mimi@Shanti who is 15th years old student studying in class X at Govt. Higher Secondary School Anini would like to lodge complaint against above mentioned officers for wrongful confinement, illegal serving of liquors (Breezar, Beer etc.) on 1st Oct.2017 night to my daughter and was asked to hold one night without knowledge of parent/guardian in the quarter of CO Philip Jerrang along with three other male officers(including Circle Officer) and later taken to Anini-Mipi Road.

On 3rd Oct. 2017 I got call from my wife while I was in the Jungle regarding missing of my daughter on 1st Oct. 2017. I immediately came back home from jungle and tried to know the missing incident. On the same day, my daughter was brought back to home (Aliney) on 3rd Oct. 2017 by her mother from Anini. At home I asked my daughter regarding the incident then she narrated that on 1st Oct.2017, when she went to official quarter of CO. Philip Jerrang after she got call from her friend. In the quarter she found her friends were already there in the quarter along with 3 other male officers and they were chatting, she also join, while chatting, she got late night on 1st Oct. 2017 then some officers started serving

drinks (Breezer, followed by Beer) to them in the quarter, later some of officers asked them to hold night that day. The officers were also drinking along with them. She hold one night in the CO quarter along with her two school friends, next day, in the morning on 2nd Oct. 2017, they were taken to Anini-Mipi Road along with 4 person after some fun in the Anini-Mipi Road, she was dropped back at guardians house at Kaji village at around 7 O'clock on 2nd Oct. 2017.

It is clear case of abuse of children; I therefore request your good office to registered case under 345 IPC, sexual harassment and other appropriate Section of IPC and under section of protection of children from sexual offence (POCSO) against the above mentioned person.

Yours faithfully,
Sd/-
Shri Lama Mimi,
S/o Lt. Lahume Mimi
Age- 45 Years.
Village-Alinye
District Dibang Valley

The complaint was registered as FIR Case. However, the complainant/petitioner No. 4 submitted another application on 28.11.2017 to the same Officer-In-Charge of Anini Police Station withdrawing the complaint he submitted earlier (given above). The same application is also reproduced here below:

To,

The Officer In charge,
Police Thana Anini,
District Dibang Valley.

Dated Anini the 28th Nov.2017

Sub:- Withdrawal of First Information Report(FIR) against three officers Shri Philip Jerang(CO) Shri Tarung Talak J.E(Public Works Department) and Shri PonPaul Ering J.E(URBAN).

Sir,

Most humble and respectfully I beg to state that I am withdrawing my complaints against the above mentioned three officers, which was due to serious misunderstanding and communication gap. Now we have solved the matters amicably in our tradition and customary ways.

Hence, there mentioned officer from my side.

This is for your kind information and necessary action please.

Yours faithfully,
Sd/-
Lama Mimi,
Village Alinye
District Dibang Valley,
Anini.

3. On the same day that is 28.11.2017 the P.I. General Administration Office (JUD) Anini, submitted a report to the Deputy Commissioner, Dibang Valley, District, stating that as entrusted to him the case between the two parties that is the petitioner No. 4 in this instant petition (complaint in the FIR) and one Shri Philip Jerang, C. O. Anini, one of the accused in the First Information Report(FIR) case (the petitioner No. 1 in this instant petition) have been settled amicably on 25.11.2017. Along with the report a type copy of the settlement and signed by the parties and witnesses and authenticated by the Judicial Magistrate 2nd Class, Dibang Valley District, was enclosed. However, investigation continued and on completion of the same the investigating Officer submitted the charge-sheet in the court of Judicial Magistrate 2nd Class, Anini on 30.11.2017, which is reproduced herein below:

CHARGE SHEET

ANINI P.S. CHARGE SHEET NO. 0582017 U/S342/34 IPC R/W SEC 25 JUVENILE JUSTICE ACT

The brief prosecution story for the case is that on 16/10/2017 at 1100 hrs a written complaint was received at PS Anini from Shri Lama Mimi age 45 yrs S/o Lt. Lahume Mimi of Aliney Village to the effect that on 3/10/17 he came to know that on 01.10.2017 his daughter Miss Asina Mimi age 15 yrs old studying in class X at Government Her. Sec. School Anini was gone to Shri Philip Jerrang, CO Anini official residence on the call of her friends. Three Government officer Shri Philip Jerrang, CO Anini, Shri Ponpual Ering Junior Engineer UD and Shri Tarung Tatak Junior Engineer Public Works Department Anini had served breezer, beer to the girls and asked the girls to stay night at Shri Philip Jerrang Official residence. So his daughter stayed one night at CO's residence with her two school friends without knowledge of parents. Next day on 02.10.2017 the girls were taken to Anini-Mipi road by four persons and after having funs with the girls, his daughter was dropped back at Kaji Village at around 7 o'clock.

On being received of complaint Anini PS vide Case No. 12/17 U/s 342/34 Indian Penal Code registered and self-taken up the investigation.

During investigation PO was visited, complainant and concerned witnesses were examined and recorded their statements. Victim girls Namely Miss Asina Mimi age 15 Yrs, Miss Hiniya Tayu age 15 Yrs and Miss Daya Meto age 16 yrs were thoroughly examined and recorded their statements. The victim girls were forwarded in the court of IMSC Anini to record their statement on oath U/Singrijan Dimapur Road 164 Cr.P.C., the alleged accused shri Philip Jerrang CO Anini, Shri Ponpaul Ering Junior Engineer UD Anini and Shri

Tarung Tatak Junior Engineer Public Works Department Anini were arrested on 30.10.2017. arrested alleged accused were thoroughly examined and recorded their statements. There after they were produced before the court of JMSC Anini where from accused were enlarged on bail.

During investigation I have seized 03 nos. birth certification (photo copy) in r/o victim girls Miss Asina Mini, Miss Hiniya Tayu and Miss Daya Meto. Their birth certificates show that the girls are minor in age.

During course of investigation it is revellied that Shri Philip Jerrang, CO Anini and Miss Hiniya Tayu were good friends. So on 01.10.2017 after noon Miss Hiniya Tayu took her friend Miss Daya Meto and went to the residence of Shri Philip Jerrang, CO Anini where Shri Ponpaul Ering Junior Engineer UD was found present with CO. thereafter on the phone call of Miss Hiniya Tayu her second friend Miss Asina Mini also reached their. Later on Shri Tarung Tatak Junior Engineer Public Works Department Anini also reached in CO's residence. At about 1700 approx. from CO's residence. They spent about one hrs at Koyla Camp and came back in CO's residence, there after girls consumed breezer and beer on being served by the officer and asked the girls to stay night in the CO's residence. Next day on 02.10.2017 afternoon Shri Suwanna Manpoong Branch Manager SBI Anini also reached in CO's residence on the call of shri Tarung Tatak Junior Engineer UD. Thereafter all the four officers took the three girls by personal bolero of Shri Philip Jerrang at Mipi Village area. They had some fun with girls at Mipi village area but while returning for Anini on the way Miss Miniri Tayu (elder sister of Hiniya Tayu) intercepted the bolero vehicle near Deputy Commissioner Bungalow then only the guardians came to know that their 03 minor girls were confined by three officer's Namely Shri Philip Jerrang, CO, Shri Ponpaul Ering Junior Engineer UD and Tarung Tatak Junior Engineer Public Works Department for one night and two days without knowledge of parents.

Under the above facts and circumstances a prima-facie case punishable U/S 342/34 Indian Penal Code R/w sec 25 of juvenile justice Act found well established against alleged accused Shri Philip Jerrang CO, Anini, Shri Ponpual Ering Junior Engineer UD Anini and Shri Tarung Tatak Junior Engineer Public Works Department Anini. Therefore I am sending them before the Hon'ble court of law to face their trial under aforesaid sections of Law. Witnesses noted in IIF-Village in serial No. 13 may kindly be summoned to prove the case at the time of the trail.

Enclo:-

1. *Statements -09 nos.*
2. *Birth certificates (photo copy) -03 nos.*
3. *Seizer list -01 no.*

Sd/-
ASI (Kejing Ratan)I/O
P.S. Anini

4. The petitioners, after coming to know that the charge-sheet given above has been submitted, has come to this Court Under Section 482 Cr.P.C. praying for quashing and setting aside of the same, mainly on the ground that the matter has been settled amicably between the parties therefore, to go ahead with the trial would be wastage of time and may amount to abuse of process of the court.

5. Mr. Sonar, learned counsel for the petitioner submits that this application is jointly filed by the complainant in the First Information Report (FIR) case and the accused persons, therefore, there could be no doubt that the parties had reached a compromise settlement. As such, if the court of the Judicial Magistrate 2nd Class, Anini proceeds further on the charge-sheet submitted by the Police it would amount to unnecessary harassment of the accused persons. The learned counsel also submitted that the First Information Report (FIR) was registered due to communication gap between the parties, so when an understanding was reached the complainant had submitted an application to the officer-in-charge of the same police station

withdrawing the same. So, the Officer-in-charge of the police station, on received of the same ought to have close the First Information Report(FIR). Mr. Sonar also submitted that the girls were not called by the accused persons to the quarter of Mr. P. Jerang, one of the accused in (petitioner No.1 in the instant petition). In fact, they came on their own and stayed that night as one of them suffered from stomach ache. Nothing wrong or anything criminal was committed by the accused persons except that the girls shared a small bottle of Breezer which is like Beer with small quantity of alcohol content, and it was not offered with the intention to intoxicate them or to commit anything wrong on them rather, it has to be looked at and understood in the context of the local custom. The learned counsel further submitted that it was not in the knowledge of the accused persons that the girls were minors, therefore, keeping this in view and the facts and circumstances of the case the petition may be allowed in the interest of justice.

The learned counsel submitted two judgments of the Hon'ble Supreme Court and two judgments of Delhi High Court, one judgment of the Kerala High Court and one judgment of Gujarat High Court. The relevant portions of the two judgments of the Hon'ble Supreme Court are reproduced here below but the contents of the judgments of the Hon'ble High Courts are not reproduce to avoid repetition of the principle of law already stated in the two judgments of the Hon'ble Supreme Court:

I. ***Reported in 2012(10)SCC 303 GIAN SINGH-VS-STATE OF PUNJAB & ANR.***

51 " Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under the special

statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 of the IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The Revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to

prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section

482. No precise and inflexible guidelines can also be provided.

58. Where the High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty

and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominatingly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding".

II. ***Reported in 2014(6)SCC 466 NARINDER SINGH & ORS -VS- STATE OF PUNJAB & ANR***

13."The question is as to whether a offence under Section 307 IPC falls within the aforesaid parameters. First limb of this question is to reflect on the nature of the offence. The charge against the accused in such cases is that he had attempted to take the life of another person (victim). On this touchstone, should we treat it a crime of serious nature so as to fall in the category of heinous crime, is the poser.Finding an answer to this question becomes imperative as the philosophy and jurisprudence of sentencing is based thereupon. If it is heinous crime of serious nature then it has to be treated as a crime against the society and not against the individual alone. Then it becomes the solemn duty of the State to punish the crime doer. Even if there is a settlement/compromise between the perpetrator of crime and the victim, that is of no consequence.

14.The Law prohibits certain acts and/or conduct and treats them as offences. Any person committing those acts is subject to penal consequences which may be of various kind. Mostly, punishment provided for committing offences is either imprisonment or monetary fine or both. Imprisonment can be rigorous or simple in nature. Why are those persons who commit offences subjected to such penal consequences? There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

15.Whereas in various countries, sentencing guidelines are provided, statutorily or otherwise, which may guide Judges for awarding specific sentence, in India we do not have any such sentencing policy till date. The prevalence of such guidelines may not only aim at achieving consistencies in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well namely whether the purpose of awarding punishment in a particular case is more of a deterrence or retribution or rehabilitation etc. In the absence of such guidelines in India, Courts go by their own perception about the philosophy behind the prescription of certain specified penal consequences for particular nature of crime. For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of the Court in awarding a particular sentence. However, that may be a question of quantum.

16. What follows from the discussion behind the purpose of sentencing is that if a particular crime is to be treated as crime against the society and/or heinous crime, then the deterrence theory as a rationale for punishing the offender becomes more relevant, to be applied in such

cases. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. Thus, even when there is a settlement between the offender and the victim, their will would not prevail as in such cases the matter is in public domain. Society demands that the individual offender should be punished in order to deter other effectively as it amounts to greatest good of the greatest number of persons in a society. It is in this context that we have to understand the scheme/philosophy behind Section 307 of the Code.

17.We would like to expand this principle in some more detail. We find, in practice and in reality, after recording the conviction and while awarding the sentence/punishment the Court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the Court, particularly in those cases where the crimes committed are heinous in nature or depicts depravity, or lack morality. At times it is to satisfy the element of "emotion" in law and retribution/vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. There may be certain cases which are too obvious namely cases involving heinous crime with element of criminality against the society and not parties inter-se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases

of murder, rape, or other sexual offences etc. would clearly fall in this category. After all, justice requires long term vision. On the other hand, there may be, offences falling in the category where "correctional" objective of criminal law would have to be given more weightage in contrast with "deterrence" philosophy. Punishment, whatever else may be, must be fair and conducive to good rather than further evil. If in a particular case the Court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two inflicting interests which is to be achieved by the Court after examining all these parameters and then deciding as to which course of action it should take in a particular case.

20.On the other hand, we have few judgments wherein this Court refused to quash the proceedings in the FIR registered under section 307 IPC etc. on the ground that offence under section 307 was of serious nature and would fall in the category of heinous crime. In the case of Shiji vs. Radhika & Anr. (2011) 10 SCC 705 the Court quashed the proceedings relating to an offence under section 354 IPC with the following observations:

"5.We have heard learned counsel for the parties and perused the impugned order. Section 320 of the Cr.P.C. enlists offences that are compoundable with the permission of the Court before whom the prosecution is pending and those that can be compounded even without such permission. An offence punishable under Section 354 of the IPC is in terms of Section 320(2) of the Code compoundable at the instance of the woman against whom the offence is committed. To that extent, therefore, there is no difficulty in either quashing the proceedings or compounding the offence under Section 354, of which the appellants are accused, having regard to the fact that the alleged victim of the offence has settled the matter with the alleged

assailants. An offence punishable under Section 394 IPC is not, however, compoundable with or without the permission of the Court concerned. The question is whether the High Court could and ought to have exercised its power under section 482 the said provision in the light of the compromise that the parties have arrived at."

21.In a recent judgment in the case of State of Rajasthan vs. Shambhu Kewat & Ors. 2013 (14) SCALE 235, this very Bench of the Court was faced with the situation where the High Court had accepted the settlement between the parties in an offence under Section 307 read with Section 34 IPC and set the accused at large by acquitting them. The settlement was arrived at during the pendency of appeal before the High Court against the order of conviction and sentence of the Sessions Judge holding the accused persons guilty of the offence under Section307/34 IPC. Some earlier cases of compounding of offence under Section 307 IPC were taken note of, noticing under certain circumstances, the Court had approved the compounding whereas in certain other cases such a course of action was not accepted. In that case, this Court took the view that High Court was not justified in accepting the compromise and setting aside the conviction. While doing so, following discussion ensued:

"12.We find, in this case, such a situation does not arise. In the instant case, the incident had occurred on 30.10.2008. The trial court held that the accused persons, with common intention, went to the shop of the injured Abdul Rashid on that day armed with iron rod and a strip of iron and, in furtherance of their common intention, had caused serious injuries on the body of Abdul Rashid, of which injury number 4 was on his head, which was of a serious nature.

13.Dr.Rakesh Sharma, PW5, had stated that out of the injuries caused to Abdul Rashid, injury No.4 was an injury on the head and that injury was "grievous and fatal for life". PW8, Dr. Uday Bhomik, also opined that a grievous injury was caused on the head of Abdul Rashid. DR. Uday

conducted the operation on injuries of Abdul Rashid as a Neuro Surgeon and fully supported the opinion expressed by PW5 Dr. Rakesh Sharma that injury No.4 was "grievous and fatal for life.

14.We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in Gian Singh (Supra), and has committed a mistake in taking the view that, the injuries were caused on the body of Abdul Rashid in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in Gian Singh (supra) that the Court, while exercising the power under Section 482, must have "due regard to the nature and gravity of the crime" and "the social impact". Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against "an individual", rather than against "the society at large".

15.We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307IPC is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal

justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large."

22. Thus, we find that in certain circumstances, this Court has approved the quashing of proceedings under section 307,IPC whereas in some other cases, it is held that as the offence is of serious nature such proceedings cannot be quashed. Though in each of the aforesaid cases the view taken by this Court may be justified on its own facts, at the same time this Court owes an explanation as to why two different approaches are adopted in various cases. The law declared by this Court in the form of judgments becomes binding precedent for the High Courts and the subordinate courts, to follow under Article 141 of the Constitution of India. Stare Decisis is the fundamental principle of judicial decision making which requires 'certainty' too in law so that in a given set of facts the course of action which law shall take is discernable and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance. The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. It has, therefore, support from the human sense of justice as well. The force of precedent in the law is heightened, in the words of Karl Llewellyn, by "that curious, almost universal sense of justice which urges that all men are to be treated alike in like circumstances".

23. As there is a close relation between the equality and justice, it should be clearly discernible as to how the two prosecutions under Section 307 IPC are different in nature and therefore are given different treatment. With this ideal objective in mind, we are proceeding to discuss the subject at length. It is for this reason we deem it appropriate to lay down some distinct, definite and clear guidelines which can be kept in mind by the High Courts to take a view as to under what circumstances it should accept the settlement between the parties and quash the proceedings and under what circumstances it should refrain from doing so. We make it clear that though there would be a general discussion in this behalf as well, the matter is examined in the context of offences under Section 307IPC.

27. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise

arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.

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 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.

29.4.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.

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 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 307IPC 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 307IPC. 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.

19.7 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 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.

33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties,

though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly.

III. <u>IN THE HIGH COURT OF DELHI AT NEW DELHI</u>

Date of Decision: April 21, 2015

CRL.M.C.1585/2015 & Crl. M.A. No. 5813/2015

KEWAL KRISHAN BANSAL & ANR.

.....Petitioners

-Vesus-

THE STATE OF GOVT OF NCT OF DELHI & ANR

.....Respondents

IV. ***IN THE HIGH COURT OF DELHI AT NEW DELHI***

Date of Decision: October 05th , 2015

CRL.M.C.483/2014

AMIT SINGH

.....Petitioners

-Vesus-

STATE & ANR

.....Respondents

V. ***IN THE HIGH COURT OF KERALA AT ERNAKULAM***

Date of Decision:07th Nov.2016

CRL.M.C.7251/2016

SAJIT S.

.....Petitioner

-Vesus-

STATE OF KERALA

.....Respondent

VI. ***IN THE HIGH COURT OF GUJARAT AT AHMEDABAD***

CRL.MISC. APPLICATION NO.4437/2015

Date of Decision: 04.03.2015

MOHMEDSAAMED MOHMEDSALIM SAIYED

.....Petitioner

-Vesus-

STATE OF GUJARAT

.....Respondent

6. Ms. Mama Tang, learned Addl. P.P. submitted that it is true that the parties have come to a settlement as revealed by the record, therefore, if the case is put to trial it may amount to lame prosecution.

7. One of the offence charged against the accused persons is Section 342 of the Indian Penal Code and it is compoundable. The only one that is not compounded is the charge under Section 25 of the Juvenile Justice (Care & Protection) Act, 2000, which corresponds to Section 77 of the new Act as amended in 2015. The section reads as follows;

> ***"Penalty for giving intoxication liquor or narcotic drug or psychotropic substance to a child. Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend upto one lakh rupees".***

8. The record reveals that the complainant's (petitioner No. 4) daughter did go to the quarter of one of the accused/petitioner on her own, as called by one of her own friend and stayed back the evening with her two friends (girls). No complain or allegation was made against the accused persons/petitioners of having committed any crime on the girls or even misbehaving with them. The only thing one can make out from the charge sheet is that the 3 (three) girls had few sips of Breezer which is stated to contain small percentage of liquor. But nothing is mentioned as to who had offered or given the same to them. Be that as it may even if the drink was offered to them by the accused persons/petitioners it was in small quantity which is submitted to be in accordance with the local custom of the community, therefore, acceptable. The fact that the parties had reached to an understanding and settlement shows that such giving or serving of little amount of drink is acceptable in the society of the petitioners. Therefore, even if the case is set for trial, in all probability, it is not likely to bear any fruit. At best it may end up to be a lame prosecution.

9. In view of what has been stated above, and guided by the principles laid by the Hon'ble Supreme Court in the Judgments reproduced,

and which have been constantly followed by the High Courts in the country as is seen in the Judgments referred to by the learned counsel of the petitioners the Charge-sheet No. *05/2017, under Section 342/34/ of the Indian Penal Code read with Section 25 of Juvenile Justice Act,* submitted by Anini, Police Station in connection with First Information Report (FIR) No. *12/2017, dated 16.10.2017,* is hereby quashed and set aside.

This petition stands **disposed of**. Return the LCR.

JUDGE

Jumbi/Yabii