Neutral Citation No. - 2023:AHC:118620

A.F.R

Judgment reserved on15.02.2023

Judgment delivered on May 26, 2023

Court No. - 67

Case :- APPLICATION U/S 482 No. - 1405 of 2023

Applicant :- Gagan Pal Singh Ahuja And Another
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Hritudhwaj Pratap Sahi,Sankalp Narain
Counsel for Opposite Party :- G.A.,Anurag Vajpeyi,Padmaker Pandey

Hon'ble Rahul Chaturvedi,J.

[1] Heard Sri Anurag Khanna, learned senior Advocate assisted by Sri Sankalp Narain, Sri Raghav Dev Garg, learned counsel for the applicant ; Sri Manish Tiwary, learned Senior Counsel assisted by Sri Anurag Vajpeyi, Sri Padmaker Pandey, learned counsel for opposite party no.2 ; Sri Ajay Kumar Sharma and Sri S.M.A. Faraz Qazmi, learned counsel appearing for the State and perused the records.

[2] Since, the pleadings between the contesting parties have been exchanged and as such, the matter is ripe for final submissions. Invoking the plenary powers of this Court under Section 482 Cr.P.C., the prayer sought by the applicant is as follows :-

> *"Hon'ble court may kindly be pleased to exercise power under section 482 Cr.P.C. and in terms of the law laid down by the Supreme Court in the case of Parbatbhai Aahir(supra) pass an appropriate order quashing the criminal proceeding in so far as the applicants are concerned in case crime no.0264 of 2018 registered in Police Station-Nazirabad, District-Kanpur Nagar and also quash the revisional rejection order dated 16.12.2022 as well as the summons issued to the applicants dated 22.11.2022 so that justice be done."*

[3] During the arguments, it was urged by Sri Anurag Khanna, learned Senior Counsel appearing for the applicant to allow the present application in the terms of the law laid down by Hon'ble Apex Court in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others Vs. State of Gujarat and another, reported in (2017) 9 SCC 641** , decided on 4th October, 2017 and other catena of decisions decided by Hon'ble Apex Court on this issue, pass an appropriate order quashing the criminal proceedings in the light of the compromise dated 04.10.2019 and 10.10.2019 between the contesting parties named above in so far as the applicants are concerned in case crime no.0264 of 2018 under sections 420, 406, 467, 468, 471, 386, 389, 120B, 504 and 506 IPC registered in Police station-Nazirabad, District-Kanpur Nagar and quash the revisional order dated 16.12.2022 passed by learned Sessions' Court, Kanpur Nagar whereby the revision which had been preferred by the applicants against an order dated 23.08.2022 passed by learned Additional Chief Metropolitan Magistrate, Court No.3, Kanpur Nagar under section 319 Cr.P.C. has been allowed and summons have been issued against the applicants by the Additional Chief Metropolitan Magistrate, Kanpur Nagar fixing date 22.11.2022 as the next date in the aforesaid case.

[4] I have heard learned counsels for the contesting parties at length to their satisfaction. In order to appreciate the legal issue involve, it is imperative to give a bird's eye view to the factual matrix of the case which has given rise to the present controversy.

FACTUAL MATRIX:-

[5] The instant 482 Cr.P.C. application has been preferred by Gagan Pal Ahuja s/o Preet Pal Singh Ahuja and his father Preet Pal Singh Ahuja s/o Darshan Singh r/o House No.7, Silver Mension, Silver Spring, Phase-I, Bypass road, Indore, (M.P.) challenging the aforesaid orders of learned Magistrate dated 23.08.2022, as well as order of confirmation by the learned Revisional court dated 16.12.2022 passed by learned Sessions Judge, Kanpur Nagar whereby despite of the fact that the parties have come to terms and the opposite party has received the amount to his satisfaction, in a clandestine fashion, opposite party no.2 have managed to move an application through Public Prosecutor, for summoning the applicants(who are non-accused) in the exercise of power under section 319 Cr.P.C.

[6] Way back on 01.01.2015, a partnership deed was executed comparising of (I) Ms. Meeta Dua, w/o of Sonu Dua (ii) Devendra Singh Dua(opposite party no.2) (iii) Gagan Pal Singh Ahuja-applicant no.1 and one Jaspal Singh Ahuja as partner of the partnership firm M/s A.K. Enterprises having registered office at Shop No.33, Kenal Market, Lajpat Nagar, Kanpur Nagar. Preetpal Singh, applicant no.2 have got no concern with the said partnership firm, but for the best reasons known to opposite party no.2, father of Gagan Pal Singh Ahuja, has been unnecessarily dragged in this offence.

[7] On 07.05.2015 and 10/12.06.2015, a sale deed was allegedly executed by Vikram Singh Chauhan and Mr Man Singh, in favour of M/s A.K. Enterprises in respect of certain landed property at Village Hatipura Tehsil Barod, District-Agar

Malwa, Madhya Pradesh. Applicant no.1, Gagan Pal Ahuja endorsed the said sale deed on behalf of the partnership firm i.e. M/s A.K. Enterprises. The consideration for the execution of the aforesaid sale deed was Rs.67 lacs and Rs.50 lacs and the same was paid by respondent no.2 and applicant no.1 respectively. The respondent no.2 paid the amount directly to Sri Vikram Singh and Sri Man Singh.

[8] In the year 2016 after digesting the amount, the said Vikram Singh Chauhan has admitted the fact that the so-called sale deed with regard to aforesaid landed property was never registered and said transaction was not legally completed. Sensing that something sneaky and shabby may occur, Sri Devendra Singh Dua-respondent no.2 have backed out from the said partnership firm and a fresh partnership deed came into existence on 01.04.2016, between Ms. Meeta Agrawal, w/o Sonu Dua, Gagan Pal Singh Ahuja and Jaspal Singh Ahuja.

[9] Soon after coming to know that the nefarious design of Vikram Singh Chauhan and others, on 16.10.2017, Gagan Pal Singh Ahuja, applicant no.1 himself has lodged an FIR under section 420, 467, 468, 471, 406 IPC at Police Station-Agar, District-Malwa, M.P. against Vikram Singh Chauhan for the alleged act of cheating and committing fraud against the applicant no.1 and his partnership firm. After the investigation, on 15.05.2018, a charge sheet was submitted by the Investigating Officer for the case as C.S. No.93 on 15.05.2018 and Sri Vikram Singh Chauhan was arrested by the M.P. Police.

[10] On the other hand, a first Information Report bearing no.0246 of 2018 was lodged on 27.12.2018 by opposite party no.2 at police station-Nazirabad, Kanpur Nagar under section 420, 406, 467, 468, 471, 386, 389, 120B, 504, 506 IPC roping in Gagan Pal Singh and his father Preet Pal Singh along with Man Singh and Vikram Singh Chauhan. As mentioned above, Preet Pal Singh was roped in this case just because he was the father of applicant no.1, though in fact, he has got no concern with above transaction.

[11] At this juncture, when the investigation was in progress, on 01.10.2019, in the presence of Gurdeep Singh, Surjeet Singh, Sonu Dua and one Saran Jeet Singh Gujral along with the applicants met with the informant/opposite party no.2 and persuaded him to settle down the dispute outside the Court. After clearing off all the misunderstandings allegedly cropped upon between them and thereafter a truce and compromise was arrived with them. After being satisfied, respondent no.2 entered into a compromise and it was agreed upon the parties that the applicants would pay a sum of Rs.67 lacs to respondent no.2. After taking the amount, it was also agreed that opposite party no.2 shall not proceed against the applicants in case crime no.264 of 2018 in the light of the compromise deed dated 04.10.2019 and 10.10.2019(Annexure-11 and 12 of the petition). From Annexure-12, it is clear that the applicant has extended 19 posted dated cheques of different dates in favour of Ms. Meeta Dua and Mr. Devendra Singh Dua respectively whose details were given in the compromise letter addressed to S.S.P. Kanpur Nagar. It is interesting to point out here that prior to this, a compromise deed was signed by Meeta Dua, Devendra Singh Dua and

Gagan Pal Singh Ahuja in front of the witnesses Sonu Dua and Saranjeet Singh Gujral. It has been argued by learned counsel for the applicant that as and when, those cheques were fallen due, they were duly encashed in the account of Meeta Dua and Devendra Singh Dua respectively and entire outstanding sum was credited in their respective accounts. Thus, opposite party no.2 has admitted, that he has got no objection, if the prosecution against the applicants may be dropped. Taking into account the said acknowledgement by opposite party no.2, I.O. of the case have submitted the 'CLOSURE REPORT' against the applicants only after taking those compromise/settlement between the parties as part of Case Diary and taking them on record in Parcha Tittama No.4.

[12] After submission of the charge sheet, the remaining accused persons were put to trial after framing the charges against them. It is worthwhile to point out that no charges were framed against the present applicants as they were non-accused, and their names were dropped by the I.O. on account of aforementioned compromise and settlement between the contesting parties. On 06.04.2021 and 06.12.2021 in examination-in-chief and its cross-examination, PW-1, informant Devendra Singh Dua, in no uncertain terms has admitted (a) that initially he has been duped by 67 lacs; (b) he has signed the compromise deed with the applicant out of his own sweet will without any coercion or threat upon him and (c) he has received 19 post dated cheques mentioned from serial no.1 to 19 of the compromise deed to the tune of Rs.67 lacs and all the cheques were duly encashed in their respective account. The relevant extracts of the testimony of PW-1 Devendra Singh Dua is quoted hereinbelow :-

“ आज दिनॉक 06.12.2021 को साक्षी देवेन्द्र सिंह दुआ पुत्र श्री अमीर सिंह सशपथ पत्र बयान किया–

इस पूरे मामले में मेरे व मेरी बडी बहू श्रीमती मीता दुआ का कुल 67 लाख रूपया निवेश हुआ था। पत्रावली में संलग्न सुलहनामा एवं क्षतिपूर्ति के कागजात के संबंध में सहमत हेतु पत्र दिनॉकित 4.10.19 प 2 में प्रथम पक्ष के रूप में लगा हुआ चित्र मेरा है तथा इस पर लगा हुआ निशानी अगूठॉ भी मेरा है। इस समझौता पत्र के पेज 6 के पैरा 1 में दी गयी 01 लागयत 19 तक की चेके समस्त चेकों का भुगतान हो गया है। अभियुक्त विक्रम सिंह से मेरा कोई समझौता नहीं हुआ है। उसको 62 लाख रूपये दिये थे उसने कोई भुगतान नहीं किया है।

जमीन के लेन–देन की बात वर्ष 2015 में नवम्बर के आखरी सप्ताह में हुई थी। उस जमीन का मुआयना उस समय मैंने किया था। इन जमीनों के कागजात की मैने जॉच करायी थी। इन जमीनों के स्वामी अनेक थे जिसका मुख्तारनामा विवके के पास था। प्रीतपाल सिंह व गगनपाल सिंह द्वारा कहा गया कि कागजात एकदम सही है मैनें जॉच की है। उनकी बात पर विश्वास करके मैने जमीन का सौदा किया था।

समयाभाव के कारण जिरह स्थगित की गयी। जिरह जारी रहे।

[13] From the aforesaid, it is explicitly clear that opposite party no.2 in no uncertain terms have acknowledged the receipt of Rs.67 lacs as a result of compromise dated 04.10.2019 and 10.10.2019 annexed as Annexure-11 and 12 respectively.

[14] It seems that opposite party no.2 has some different design in his mind and that is why after, receiving the entire outstanding amount of Rs.67 lacs in their accounts, in order to harass the applicants, in the sham criminal case, have persuaded the Public Prosecutor to drag the applicants in this offence with whom opposite party no.2 has already have a truce. Out of blue and without any anticipation to the applicants, the Public Prosecutor Mr. Sandeep Kumar Singh on 21.02.2022 has filed an application under section 319 Cr.P.C. for adding the applicants as accused of pending trial which has been undergoing arising out of case crime no.264 of 2018. This was unexpected move on the part of the public prosecutor who seems to be in the hand in glove with opposite party no.2 as argued by learned counsel for the applicants.

[15] Responding to this application, the Additional Chief Judicial Magistrate, Kanpur Nagar on 23.08.2022 has allowed the said application moved by the

Public Prosecutor and have eventually summoned Gagan Pal Singh Ahuja and his father Preet Pal Singh Ahuja as an additional accused, fixing 26.09.2022 as next date fixed, while issuing the summons to the applicants. The learned Additional C.M.M. Court No.3, Kanpur Nagar have opined that **:**

> अवलोकन से दर्शित है कि न्यायालय में दाखिल आरोप पत्र में यह स्पष्ट है कि अभियुक्त विक्रम सिंह चौहान तथा गगनपाल सिंह के विरूद्व न्यायालय में आरोप पत्र दाखिल किया गया था तथा गगनपाल सिंह व प्रीतपाल सिंह की कार्यवाही को शेष बताया गया है।
>
> विवेचक द्वारा पर्चा तितम्मा 4 में गगन पाल सिंह व प्रीतपाल सिंह का सुलहनामा छतिपूर्ति भुगतान के आधार पर विवेचना समाप्त की दी गयी थी जबकि गवाहों के बयानो से यह स्पष्ट है कि अपराध गगनपाल सिंह व प्रीतपाल के द्वारा किया जाना दर्शित है। सुलहनामा कर लेने से अभियुक्तगण का अपराध समाप्त नहीं हो जाता है। अतः प्रार्थी का प्रार्थना पत्र अंतर्गत धारा 319 दं0प्र0सं0 स्वीकार किये जाने योग्य है।

[16] Sri Khanna, learned Senior Counsel submits that this is the exclusive and rare case of dishonesty whereby at one hand, the opposite party have accepted the total sum of Rs.67 lacs to his satisfaction after entering into the said compromise, on the other hand, he has instigated or made arrangement through Public Prosecutor to move an application to make the applicants as an additional accused of pending trial in exercise of power under section 319 Cr.P.C.

[17] Aggrieved by the order dated 23.08.2022 passed by the Additional C.M.M. Court No.3, Kanpur Nagar, allowing the 319 Cr.P.C. application moved by the Public Prosecutor, the applicants have preferred Criminal Revision under section 397 Cr.P.C registered as Criminal Revision No.390 of 2022. Ultimately, that criminal revision too was rejected by the learned Revisional Court confirming the orders dated 23.08.2022. While rejecting the said revision preferred by the applicants, learned Revisional Court pleased to observe the following :-

> “अवर न्यायालय की पत्रावली के परिशीलन से यह भी विदित होता है कि देवेन्द्र सिंह दुआ, श्रीमती मीता दुआ प्रथम पक्ष व गगनपाल सिंह अहूजा व जसपाल सिंह अहूजा पुत्रगण प्रीतपाल सिंह अहूजा व प्रीतपाल सिंह के मध्य एक समझौता हुआ है, जिसमें उन्होंने माना है कि मान सिंह व विक्रम सिंह ने कूटरचित अभिलेखों के आधार पर देवेन्द्र सिंह व मीता दुआ से 67,00,000/—रूपये की बेइमानी एवं धोखाधड़ी की थी और इसके एवज में उन्होंने 67,00,000/—रूपये क्षतिपूर्ति

के रूप में देना स्वीकार किया है। स्पष्ट है कि स्वयं अभियुक्तगण गगनपाल सिह व प्रीतपाल सिंह ने भी प्रस्तुत प्रकरण में यह माना है कि उन्होने वादी देवेन्द्र सिंह दुआ व मीता दुआ से धोखाधड़ी ब बेइमानी की है। साक्षीगण पी0डब्लू0 1 व 2 के साक्ष्य से इस स्तर पर यह साबित है कि अभियुक्तगण व उनके साथियों द्वारा कूटरचित विक्रय पत्र के आधार पर वादीपक्ष को आर्थिक क्षति पहुंचायी गयी है तथा उनसे धोखाधडी की गयी है, उन्हें धमकाया गया है, उन्हें जान से मारने की धमकी दी गयी है, गाली गलौज की गयी है तथा उन्हें बलात्कार के झूठे मुकदमे में फंसाने की धमकी दी गयी है। तथा वादी पक्ष के 67,00,000/–रूपये हड़प लिये गये है। अभियुक्तगण द्वारा कारित अपराध धारा 320 दं0प्र0सं0 के अन्तर्गत शमनीय प्रकृति का नही है, ऐसी स्थिति में अभियुक्तगण व वादी के बीच हुये कथित समझौते का प्रस्तुत वाद के तथ्यों पर कोई प्रभाव नहीं पडता है तथा इस समझौते के आधार पर अभियुक्तगण को विचारण से मुक्त नहीं किया जा सकता है। उपरोक्त परिप्रेक्ष्य में अवर न्यायालय द्वारा साक्षीगण पी0डब्लू0 1 व 2 के साक्ष्य के आधार पर अभियुक्तगण को धारा 319 दं0प्र0सं0 में विचारण हेतु धारा 406, 420, 467, 468, 471, 386, 389, 504, 506 व 120 बी. भा0दं0सं0 में आहूत करने में कोई विधिक त्रुटि कारित नहीं की गयी हैं। तदनुसार प्रस्तुत दण्ड निगरानी निरस्त होने योग्य है।

[18] Hence, the present application under section 482 Cr.P.C assailing the order dated 23.08.2022 and 16.12.2022 respectively. From the records, it is clear that proceeding against the remaining co-accused persons namely Vikram Singh Chauhan and Man Singh is still pending and proceeding smoothly.

[19] Per contra, a short counter affidavit has been filed on behalf of Devendra Singh Dua, opposite party no.2 sworn by Sonu Dua and in the said counter affidavit, in paragraph no.11, the deponent of the counter affidavit acknowledges that the compromise deed has been executed on 04.10.2019 and 10.10.2019 between the parties after receiving the total sum of Rs.67 lacs and all the 19 post dated cheques totalling to the aforesaid amount got encashed and the amount has been credited in the accounts of opposite party no.2 and Ms. Meeta Dua. But in the remaining paragraphs, the counsel for opposite party no.2 has tried to draw some parallel between the applicant no.1 and Vikram Singh Chauhan. But there is no denial to the fact that Rs.67 lacs were credited in the account of opposite party no.2 as a result of compromise between the parties arrived on 04.10.2019 and 10.10.2019.

[20] It has been submitted by learned counsel for the applicant that courts below were unmindful of the fact that there is compromise between the parties which

was arrived at between them to their satisfaction and the contesting parties were satisfied by the said compromise. There was no occasion or reason to file an application under section 319 Cr.P.C. to summon the applicant which was actually done by the learned Chief Metropolitan Magistrate and confirmed by the learned Revisional court. Both are anti-thesis to each other and cannot go hand-in-hand. Therefore, it could be safely termed that the action on the part of the Public Prosecutor was motivated one to attain sinister motive.

[21] On aforesaid factual parameters, learned counsel for opposite party no.2 Sri Manish Tiwary, at the outset has raised his submissions with regard to a **partial compromise** between the parties and its admissibility. Secondly, Sri Tiwary has strenuously defended the orders of learned Additional Chief Metropolitan Magistrate dated 23.08.2022 and revisional order dated 16.12.2022 confirming the orders of learned Additional Chief Metropolitan Magistrate by making a mention that since those compromise deed were never produced during the trial and never exhibited as a part of the evidence thus, they would not fall within the ambit of expression 'Evidence' as contemplated in the *Hardeep Singh's Judgment* and therefore, the said compromise cannot be looked into.

[22] Let us deal with the every issue one by one :-

(i)Permissibility of the peacemeal compromise between the parties

The compromise, in the modern society, is the *sine qua non* of a harmony and orderly behaviour. The sole of the justice and if the power under section 482 Cr.P.C. is sued to enhance such compromise which, in turn, enhances the social

amity and reduces friction, then it is a "finest hour of the justice". Dispute which has their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt by the Court by exercising its power under section 482 Cr.P.C. In the event of the compromise, the said power is to be used in its true sense in its totality and shall not be used in its abridged form. There can never be any such rigid rules prescribed in exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of litigation.

[23] The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by the distorted perceptions and is not slave to anything, except to caution and circumspection, the standard of which the Court sets before it, in exercise of such plenary and unflattered power inherently vested in it while donning the cloak of compassion to achieve the end of justice. No embargo, be in a shape of Section 320 Cr.PC.(Cr.P.C.) or any other such curtailment, can whittle down the powers under section 482 Cr.P.C.

[24] In this regard, learned counsel for the applicants has cited the judgment of Hon'ble the Apex Court to buttress his contention that even a peacemeal compromise is permissible under the law exercising the inherent power of this Court under section 482 Cr.P.C. In the case of ***Lovely Salhotra and anr Vs. State, NCT, Delhi (2017) SCC Online SC (636)***, it has been opined by Hon'ble the Apex Court that :-

"4. We have taken into account the fact of the matter in question as it appears to us that no cognizable offence is made out against the appellant-herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants-herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2— herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co- accused Nos.2, 3, 4 and 6 prima facie.

7. Accordingly, we set aside the order of the High Court and quash the FIR qua the appellants- herein."

[25] Similarly in the case of ***Vijay Kumar Gupta Vs. State Government of NCT Delhi*** in Criminal Misc no.2289 of 2013 dated 09.03.2017 in paragraph no.7 has observed that :

"7. Looking into the facts and circumstances of the case and the fact that the petitioners have paid the loan/settlement amount to the Respondent No.2 and nothing remains to be adjudicated further, to remove the hurdle in the personal life of the present petitioners for leading better and peaceful life and to meet the ends of justice, I deem it appropriate to quash the FIR No.107/2003, under Section 406/420/468/471 Indian Penal Code, 1860,, registered at Police Station – Parliament Street, Delhi qua against the petitioners, namely Vijay Kumar Gupta, Raj Kumar Sharma and Vinod Chaudhary only to the extent of their role in commission of the alleged offence."

[26] In the case of **Jayraj Singh Digvijay Singh Rana vs. State of Gujrat** and another reported in ***(2012) 12 SCC 401***, Hon'ble Apex Court has held that :-

"The only question for consideration before this Court at this stage is that inasmuch as all those offences are not compoundable offences under Section 320 *of the Code (except* Section 420 *of IPC that too with the permission of the Court before which any prosecution for such offence is pending), whether it would be possible to quash the FIR by the High Court under* Section 482 *of the Code or by this Court exercising jurisdiction under* Article 136 *of the Constitution of India?*

8) The above question was recently considered by this Court in Shiji @ Pappu & Ors. vs. Radhika & Anr. (2011) 10 SCC 705. The question posed in that case was "Whether the criminal proceedings in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at." After adverting to Section 482 *of the Code and various decisions, this Court concluded as under:*

"17. It is manifest that simply because an offence is not compoundable under Section 320 *CrPC is by itself no reason for the High Court to refuse exercise of its power under* Section 482 *CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under* Section 482 *CrPC on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under* Section 482 *CrPC are not for that purpose controlled by* Section 320 *CrPC. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."*

9) On going through the factual details, earlier decision, various offences under Section 320 of the Code and invocation of Section 482 of the Code, we fully concur with the said conclusion. In the case on hand, irrespective of the earlier dispute between Respondent No. 2-the complainant and the appellant being Accused No. 3 as well as Accused Nos. 1 and 2 subsequently and after getting all the materials, relevant details etc., the present appellant (Accused No. 3) sworn an affidavit with bona fide intention securing the right, title and interest in favour of Respondent No.2 herein-the Complainant. In such bona fide circumstances, the power under Section 482 may be exercised. Further, in view of the settlement arrived at between Respondent No. 2-the complainant and the appellant (Accused No. 3), there is no chance of recording a conviction insofar as the present appellant is concerned and the entire exercise of trial is destined to be an exercise in futility. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power under Section 482 of the Code even in offences which are not compoundable under Section 320, may quash the prosecution. However, as observed in Shiji (supra), the power under Section 482 has to be exercised sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In other words, the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.

[27] Recently, Hon'ble the Apex Court expanding the horizon of Section 482 Cr.P.C. have acceded that in the event, the parties agree and they have entered into a compromise even in the proceeding of Section 376 IPC could be invoked and proceeding may be quashed depending upon the stage of trial with regard to the heinous offences like rape, have expressed his opinion in the case of ***Kapil Gupta Vs. State of NCT Delhi reported in (2022) SCC Online SC 1030*** while relying upon the judgment of ***Narender Singh Vs. State of Punjab*** reported in ***(2014) 6 SCC 466*** have expanded the scope of Section 482 Cr.P.C. paragraph no.13 and 14 of *Kapil Gupta's case* is extracted hereinbelow :-

> *13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.*
>
> *14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power."*
>
> Thus, deciding whether to exercise its power in the heinous offence like rape under section 482 of the Code, timings of settlement plays a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of the offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceeding/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.

[28] Thus, comparing the aforesaid ratio by Hon'ble the Apex Court whereby the court has accorded his permission to have a peace meal compromise

meaning thereby a part compromise with certain accused persons, I have got no hesitation to accept that opposite party no.2 has validly entered into compromise with the applicants on 04.10.2019 and 10.10.2019 leaving behind rest of the charge sheeted accused

[29] I have perused the order under challenge dated 23.08.2022 of the Additional C.M.M. Kanpur Nagar in which in no uncertain terms submits that mere on the ground of settlement between the parties, the gravity of the offence cannot be liquidated or the offence itself cannot be evaporated and therefore, have allowed the 319 Cr.P.C. application moved by the Public Prosecutor.

[30] As quoted above, learned A.C.M.M. Kanpur Nagar, ignoring the compromise, and the *parcha tittma no.4,* has wrongly averred that mere compromise would not end the rigors of the punishment or the offence itself. This finding by the learned Magistrate is dehors of the ratio laid down by Hon'ble Apex Court in the cases of (i) ***Shiji @ Pappu and Others VS. Radhika and Another, (2011) 10 SCC 705 (ii) Dimpey Gujral and others Vs. Union Territory through Administrator, U.T. Chandigarh and others, (2013) 11 SCC 497 (iii)Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others Vs. State of Gujarat and another, (2017) 9 SCC 641 (iv)Yogendra Yadav and Ors. Vs. State of Jharkhand and another (2014) 9 SCC 653 (v)B.S. Joshi and others Vs. State of Haryana and another (2003) 4 SCC 675.***

[31] Taking the ratio in the aforementioned judgment, the findings recorded by the A.C.M.M, Kanpur Nagar, is in the stark contrast with the aforesaid findings.

[32] Similarly, when the Revisional Court considered, it has been clearly mentioned that the offence is not compoundable offence under the provision of Section 320 Cr.P.C, and therefore, it has been mentioned that said compromise have got no bearing in the offence. This proposition of law is unswolloable and cannot be accepted. As mentioned above, the scope and ambit of Section 482 Cr.P.C. is in much wider than that of Section 320 Cr.P.C. In the aforementioned judgments, this Court has already discussed elaborately which need not reiterated and thus, both the judgments and orders passed by the learned A.C.M.M. Kanpur Nagar and learned Revisional Court are the direct conflict of the aforesaid ratio of the case decided by Hon'ble the Apex Court and liable to be set-aside

(ii) Expression of word 'Evidence' in Section 319 Cr.P.C.

[33] Since, the focal issue of this 482 application is the alleged two orders dated 23.08.2022 and 16.12.2022 passed by the learned A.C.M.M-III, Kanpur Nagar and its order of confirmation by learned Sessions Judge, Kanpur Nagar respectively. In this regard, it is imperative to spell out the bare skeleton provision of Section 319 Cr.P.C. which reads thus :-

> **Section 319 in The Code Of Criminal Procedure, 1973**
>
> *319. Power to proceed against other persons appearing to be guilty of offence.*
> *(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
> *(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*

(3)Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
(4)Where the Court proceeds against any person under sub- section (1), then-
(a)the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;
(b)subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

[34] Sri Manish Tiwary, learned Senior Counsel, at the outset, without mincing any words, have accepted that there is truce and compromise between the parties. He further submits that as per his instructions, his client has received the outstanding amount of Rs.67 lacs but he has unable to give satisfactory reply as to what is the occasion for moving application under section 319 Cr.P.C. summoning the applicants. It seems that the only motive could be attributed for moving this application is simply an arm twisting of the applicants so that they may give the interest over it. This suggestion by the Court, was not disputed by the learned Senior Counsel. In addition to this, he has not denied the statements of PW-1, Devendra Singh Dua and his cross-examination mentioned in aforesaid paragraph no.12. On this, he states that even assuming for the sake of the arguments that there is a compromise between the parties but since the said compromise is not exhibited and therefore it cannot be read or looked into as a piece of evidence, its content cannot be relied upon.

[35] Hon'ble the Supreme Court has an occasion to deal and decide the expression 'Evidence' in its celebrated judgment of ***Hardeep Singh and anr Vs. State of Punjab*** reported in ***AIR 2014 SC 1400*** . The Court has formulated the question :-

** "Whether the word 'Evidence' used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the Court can exercise the powers under the said provision even on the basis of statements made in examination-in-chief of the witness concerned ?*

*** "Whether the word 'Evidence' used in Section 319(1) Cr.P.C. has been used in a comprehensive sense collected during investigation or the word 'Evidence' is limited to the evidence recorded during trial ??*

[36] Before coming to the reply to the aforesaid queries, it is imperative to search out the true nature and import of Section 319 Cr.P.C. which springs out from the doctrine JUDX DAMNATUR CUM NOCENS ABSOLITUR (Judge is condemned when the guilty is acquitted) and this doctrine is an undercurrent and used as a bacon light while explaining the ambit and spirit underlying the enactment of Section 319 Cr.P.C. It is the duty of the Court to do justice by punishing the real culprit. Whether the Investigating Agency for any reason does not array one of the real culprits as an accused, the Court is not powerless in calling the said accused to face the trial. But, a million dollar question remains that what are the circumstances and what is the stage, the Court should exercise its power as contemplated under section 319 Cr.P.C. The submission were raised before the court covered a very wide canvas and the learned counsel have taken the Court to the various provision of Cr.P.C. and judgments in that regard. But fact remains that the controversy centres around the stage at which such power can be invoked by the court and the material on the basis whereof, such extra-ordinary power could be exercised by the Court.

[37] From the ages, the Court are the sole repository of the justice and the Court are ordained to do justice and a duty is caste upon it to uphold the rule of

law, and therefore, will be inappropriate to deny the exercise of such power to the court in our criminal justice system where it is not uncommon that the real accused or the kingpins, at times, get away by manipulating the investigation or the prosecuting agency. The desire to avoid the trial is so strong that an accused makes all effort at times to get away himself absolve even at the stage of investigation or inquiry even though, he is connected with commission of the offence. The legislature cannot be presumed to have all the eventualities and the circumstances and therefore, it is the duty of the Court to give full affects to the word used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to trial an offence and not to allow a person who deserve to be tried to go scot free by not being arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

[38] Now focussing upon the moot question the expression 'Evidence' and its true import during trial? Answering to this query, whether the expression 'Evidence' used in section 319 Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word 'Evidence is limited to the evidence recorded during trial. In this regard, the expression 'Evidence' has been defined in Section 3 of the Indian Evidence Act which reads thus :-

> "Evidence" .— " Evidence" means and includes—
> (1)all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
> (2)[all documents including electronic records produced for the inspection of the Court], such documents are called documentary evidence.

> “**Proved**” .—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
> “**Disproved**”. — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.
> “ **Not proved**”. — A fact is said not to be proved when it is neither proved nor disproved

[39] We, therefore proceed to examine the matter further on the premise that the definition of word “evidence” under the Evidence Act is exhaustive. In ***Kalyan Kumar Gogoi v. Ashutosh Agnihotri & Anr***., reported in ***AIR 2011 SC 760***, while dealing with the issue this Court held : The word “evidence” is used in common parlance in three different senses: (a) as equivalent to relevant, (b) as equivalent to proof, and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word “evidence” given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

[40] In ***Lal Suraj @ Suraj Singh & Anr. v. State of Jharkhand***, reported in ***(2009) 2 SCC 696***, a two-Judge Bench of Hon’ble the Supreme Court held that “a court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however,

the court exercises its jurisdiction under Section 319 Cr.P.C., the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction."

The word 'evidence' in Section 319 Cr.P.C. contemplates the evidence of witnesses given in the court.

[41] Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 Cr.P.C. would show that the legislature has used the terms "record of the case" and the "documents submitted therewith". It is in this context that the word 'evidence' as appearing in Section 319 Cr.P.C. has to be read and understood. The material collected at the stage of investigation can at best be used for a purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 Cr.P.C., the use of word `evidence' means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it, has also committed the offence, the court may summon such person under Section 319 Cr.P.C.

[42] The word "evidence" therefore has to be understood in its widest sense, both at the stage of trial and, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such

material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial as well as the material collected during investigation or even in an inquiry.

[43] In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from ‘evidence’ recorded during trial, any material that has been received by the court at the time of taking cognizance and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C.

[44] Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

[45] Thus, marshalling the abovesaid legal discussions as to whether the expression Evidence should be construed in its widest possible canvass or should be used in limited sense ? The reply to this query is apparent, that the expression Evidence in Section 319 Cr.P.C. has to be broadly understood and not literally that is evidence brought during the trial alone. It has to be given the broadest possible way. And thus, to suggest that since the said compromise deed is not exhibited during trial, the cross examination of the PW-1 Devendra Singh Dua and his candid acknowledgement that he has received the amount of Rs.67 lacs from the opposite party no.2, after entering into compromise and the said compromise should be taken as piece of evidence while deciding the application under section 319 Cr.P.C.

[46] The courts below were unmindful of the fact that the compromise between the parties and the summoning of non-accused persons(who are the parties of the compromise) cannot go hand in hand. Both are anti-thesis to each other and with the ulterior motive, this application was moved through Public Prosecutor.

Under these circumstances and in the light of the aforesaid judgments and the expression ‘Evidence’, coupled with the fact that the parties have already entered into terms, I have no hesitation to quash both the orders of learned A.C.M.M-III, Kanpur Nagar dated 22.11.2022 allowing the application under section 319 Cr.P.C. by the Public Prosecutor and when the same was challenged before the learned Sessions Judge, Kanpur Nagar by way of Criminal Revision

No.390 of 2022, the same was rejected confirming the orders of learned A.C.M.M-III, Kanpur Nagar. Both these orders are safely be termed as dehors of the aforesaid judgment of Hon'ble the Apex Court and the anti thesis of compromise. At the cost of repetition, the Court has no hesitation to observe that the opposite party no.2 have got some ulterior plans to extract more money from the applicants by way of interest and that is why, he has used the Public Prosecutor for this purpose and succeeded to an extent but fact remains that since, he has already entered into compromise and with the specific understanding that after taking the amount, he will not go to prosecute the applicants in the aforesaid offence, still, he has managed to obtain the favourable orders which in my opinion is liable to be set-aside.

[47] Accordingly, both the orders of learned A.C.M.M-III, Kanpur Nagar dated 22.11.2022 and order of confirmation passed by learned Revisional Court dated 16.12.2022 are hereby quashed.

[48] The present application filed under section 482 Cr.P.C. hereby stands **ALLOWED**.

Order Date :-26 May, 2023

Sumit S