

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRA No.D-646-DB of 2010 (O & M)
Date of decision: 29.04.2015

Meenu @ MeenaAppellant

versus

Sanjeev Kumar and others Respondents

2. CRA No.S-2301-SB of 2009 (O & M)
Date of decision: 29.04.2015

Sanjeev KumarAppellant

versus

State of Punjab and another Respondents

3. CRA No.S-2302-SB of 2009 (O & M)
Date of decision: 29.04.2015

Kuldeep Chand and anotherAppellants

versus

State of Punjab and another Respondents

and

4. CRA No.S-2303-SB of 2009 (O & M)
Date of decision: 29.04.2015

Jiwan Lata and anotherAppellants

versus

State of Punjab and another Respondents

CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present: Mr. J. S. Toor, Advocate
for the appellant-Meena @ Meenu in
Crl. Appeal No.D-646-DB of 2010 and
for the complainant-respondent No.2 in
Crl. Appeal No.S-2301-SB of 2009,
Crl. Appeal No.S-2302-SB of 2009 and
Crl. Appeal No.S-2303-SB of 2009.

Ms. Deipa Singh, Addl. AG, Punjab for the State.

Mr. Rakesh Chopra, Advocate for the respondents in
Crl. Appeal No.D-646-DB of 2010 and
for the appellant(s) in
Crl. Appeal No.S-2301-SB of 2009,
Crl. Appeal No.S-2302-SB of 2009 and
Crl. Appeal No.S-2303-SB of 2009.

S.S. SARON, J.

This order will dispose of Crl. Appeal No.D-646-DB of 2010,
Crl. Appeal No.S-2301-SB of 2009, Crl. Appeal No.S-2302-SB of
2009 and Crl. Appeal No.S-2303-SB of 2009 as they are between
the same parties and arise out of the same judgment and order
dated 31.08.2009 passed by the learned Additional Sessions Judge,
(Fast Track Court), Fatehgarh Sahib.

Criminal Appeal No.D-646-DB of 2010 has been filed by
Meenu @ Meena (complainant) whereby Sanjeev Kumar, Kuldeep
Chand, Chander Kanta, Sonia and Jiwan Lata (respondents No.1 to
5) have been acquitted of the offences punishable under Sections
406, 109 and 307 Indian Penal Code ('IPC' – for short); however,
they have been convicted for the offence punishable under Section
498-A IPC and have been sentenced to undergo rigorous
imprisonment for three years; besides, pay a fine of Rs.5000/- each
and in default in payment thereof undergo rigorous imprisonment
for three months.

Criminal Appeal No.S-2301-SB of 2009 has been filed by
Sanjeev Kumar son of Shri Kuldeep Chand; Criminal Appeal No.

S-2302-SB of 2009 has been filed by Kudeep Chand and Chander Kanta wife of Kuldeep Chand and Criminal Appeal No.S-2303-SB of 2009 has been filed by Jiwan Lata (real sister of Chander Kanta) and Sonia daughter of Kuldeep Chand against the aforesaid judgment and order dated 31.08.2009 passed by the learned Additional Sessions Judge, Fatehgarh Sahib whereby they have been convicted and sentenced for the offence under Section 498-A IPC.

The marriage between Meenu @ Meena and Sanjeev Kumar was solemnized as per Hindu rites and ceremonies at Amloh Distt. Fatehgarh Sahib on 07.12.1996. They had a son namely Prince Kumar, who was born on 04.09.1997. Kuldeep Chand is the father of Sanjeev Kumar and father in law of Meenu @ Meena. Chander Kanta is the mother of Sanjeev Kumar and mother in law of Meenu @ Meena. Sonia is the real sister of Sanjeev Kumar and sister in law ('nanad') of Meenu @ Meena. Jiwan Lata is the real sister of Chander Kanta and mother's sister of Sanjeev Kumar.

The complainant Meena @ Meenu filed a complaint stating that her marriage was solemnized with Sanjeev Kumar as per Hindu rites and customs on 07.12.1996. The accused in the case namely Sanjeev Kumar, his parents Kuldeep Chand and Chander Kanta, his sister Sonia and his mother's sister Jiwan Lata attended the marriage ceremony. Her parents spent huge amount at the marriage. Number of gifts, gold ornaments, costly clothes and valuable items were given to the couple by her parents which were for her exclusive use. The items were entrusted to the aforesaid accused for the personal use of the complainant.

The accused, it is stated, treated the complainant in a rough manner. However, she continued to bear with the same with the hope that their behaviour would improve with the passage of time but it did not improve. The dowry articles that were given did not satisfy the accused and they insisted and pressed for more dowry. The complainant in order to appease them and also please them did fulfill some demands of the accused but they remained discontented. The complainant in the end on 05.06.1997 refused to meet their demands. It is alleged that all the accused forcibly administered poison to her even though she was on the family way. While she remained unconscious, she was admitted in Sagar Hospital, Patiala. Then she was referred to Rajindra Hospital, Patiala where she remained admitted till 14.06.1997.

Thereafter with the intervention of respectable persons the matter was reconciled and the accused took the complainant to their house i.e. the in-laws of the complainant on 26.03.1997. The behaviour of the accused, however, did not change. She was turned out of their house by giving her a severe beating in three clothes only on 30.06.1997. Somehow she reached her parents house at Amloh. There she had a son who was born on 04.09.1997. Then again a compromise was reached at between the parties on 18.01.1998. The complainant was taken to the matrimonial home on 21.01.1998. After lapse of sometime, the accused again started treating the complainant with cruel behaviour. They ill-treated her; besides, misbehaved with her. They raised a demand for cash of Rs.10.00 lacs from her as additional dowry. They said in case the demand remained

unfulfilled, Sanjeev Kumar would get a divorce from her. In this manner, the complainant was again turned out of her matrimonial home on 06.05.1998. Since then she has been residing with her parents at Amloh. A list of the dowry articles that were given in marriage have been mentioned, which it is stated were entrusted to the accused. It is also mentioned that at the time of her marriage with Sanjeev Kumar, her parents and relatives gave articles in the shape of gifts to the complainant. The list of which was attached. It is stated that the said articles of gift constituted the 'streedhana' of the complainant and the accused were mere trustee and custodian of the same. They were legally and morally bound to return the articles and gifts on her demand at her parental house. It is stated that the accused never allowed the complainant to use her 'streedhana' while they were using the same for their own use and benefit. It is also alleged that the accused had retained the dowry articles belonging to the complainant for their own use. They failed to restore them to the complainant despite her repeated demands. Therefore, the complaint.

The learned Sub Divisional Judicial Magistrate, Amloh referred the complaint to the police for report, who submitted a report dated 27.05.2000. The accused were summoned to face trial for the offences punishable under Sections 406, 498-A, 307 and 109 IPC. The case vide order dated 22.01.2003 was committed to the Court of the learned Sessions Judge, Fatehgarh Sahib.

The learned Additional Sessions Judge vide order dated 30.08.2003 after hearing counsel for the parties held that a prima facie case for the offences under Section 307 read with Sections

406, 498-A and 109 IPC was made out for framing a charge against them. Accordingly, a charge-sheet was drawn up against the accused for the aforesaid offences. The accused pleaded not guilty to the charge and claimed trial.

The complainant in order to prove its case examined as many as twelve witnesses; besides, documents were tendered in evidence. The statements of the accused in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C.' - for short) were recorded and the substance of the evidence appearing against them was put to them.

The learned Additional Sessions Judge, Fatehgarh Sahib has, as already noticed, convicted the accused for the offence under Section 498-A IPC and sentenced them to undergo rigorous imprisonment for three years; besides, pay a fine of Rs.5000/- each and in default in payment thereof undergo rigorous imprisonment for three months. They have been acquitted of the other offences i.e. Sections 406, 109 and 307 IPC. The complainant in her appeal prayed for the conviction of the accused for the said offences as well while the accused prayed for their acquittal for the offence under Section 498-A IPC.

The parties to the matrimonial dispute have now, however, compromised and settled their dispute. It may be noticed that Sanjeev Kumar filed a petition for divorce in the Court of learned District Judge, Patiala seeking dissolution of his marriage with Meenu @ Meenu on the ground of cruelty. His petition was dismissed by the learned Additional District Judge (Ad hoc), Patiala on 03.12.2003. Aggrieved against the same, he filed FAO No.9-M

of 2004 in this Court. The dispute between the parties was compromised. The parties filed a joint petition i.e. CM No.21159-CII of 2012 seeking dissolution of their marriage by a decree of divorce by way of mutual consent.

The statements of the parties were recorded at the first motion on 28.08.2012. The case was adjourned for a period of six months and then the statements of the parties were recorded at the second motion in this Court. On the basis of the compromise between the parties, the joint petition filed by the parties under Section 13-B of the Hindu Marriage Act was allowed and the marriage between the parties was dissolved by a decree of divorce by mutual consent. The parties were to remain bound by the terms and conditions of the compromise.

Meena @ Meenu had received a bank draft for an amount of Rs.7.00 lacs for herself and Rs.2.00 lacs for the minor son of the parties namely Prince. In consequence of the settlement that had been reached at between the parties and the divorce granted by this Court on 01.03.2013, it is submitted by learned counsel appearing for the respective parties that the present proceedings be dropped in view of the compromise between the parties.

Mr. J. S. Toor, Advocate appearing for Meenu @ Meena submits that in view of the compromise between the parties, he does not press the appeal (CRA No.D-646-DB of 2010) filed by Meenu @ Meena and the same may be dismissed as withdrawn.

The other appeals i.e. Crl. Appeal No.S-2301-SB of 2009 has been filed by Sanjeev Kumar, Crl. Appeal No.S-2302-SB of 2009 has been filed by Kuldeep Chand and Chander Kanta, the

parents of Sanjeev Kumar; Crl. Appeal No.S-2303-SB of 2009 has been filed by Jiwan Lata, the sister of Chander Kanta i.e. mother's sister ('massi' of Sanjeev Kumar) and Sonia daughter of Kuldeep Chand, that is, sister of Sanjeev Kumar. They assail their conviction and sentence for the offence under Section 498-A IPC.

Mr. Rajesh Chopra, Advocate for the said appellants submits that in view of the compromise between the parties, the appeals may be allowed and the order of conviction and sentence which is for the offence under Section 498-A IPC be set aside.

Mr. J. S. Toor, Advocate for the complainant-Meena @ Meenu in the said appeals submits that he has no objection to the same.

Ms. Deipa Singh, Addl. AG, Punjab appearing for the State, however, submits that after the conviction of the appellants in Crl. Appeals No.S-2301, S-2302 and S-2303 of 2009, the order of conviction and sentence is not liable to be set aside on the basis of compromise. Since, however, it was a complaint case on the basis of which the order of conviction and sentence has been recorded, she would have no serious objection to invalidating the conviction and sentence of the accused, who have been convicted and sentenced.

We have given our thoughtful consideration to the matter.

The question whether criminal proceedings can be quashed by this Court under Section 482 Cr.P.C. when the accused was found guilty and had been convicted by the learned trial Court and the appeal was pending before the Sessions Judge, was considered by a Division of Bench of this Court in Sube Singh and another v.

State of Haryana and another, 2013 (4) RCR (Criminal) 102. The following questions were considered by the Division Bench in consequence of the aforesaid reference:-

“10. From the above-reproduced reference order, the following two questions arise for determination by the larger Bench:-

(1) Whether the power exercisable by the High Court under Section 482 Cr.P.C. is controlled by Section 320 Cr.P.C. or it can be invoked in an appropriate case even if the offences are not compoundable in nature?

(2) Whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. even after the accused was found guilty and convicted by the trial court though the matter is sub judice before the appellate court?”

With respect to the first question that was formulated i.e. whether the power exercisable by the High Court under Section 482 Cr.P.C. is controlled by Section 320 Cr.P.C. or it can be invoked in an appropriate case even if the offences are not compoundable in nature, it was said that the extent and sweep of the inherent power exercisable by the High Court under Section 482 Cr.P.C. for quashing the criminal proceedings on the basis of compromise between the offender and the victim of a crime in a case which is not compoundable under Section 320 Cr.P.C., had since been considered *in extenso* and answered by Hon'ble the Supreme Court

in Gian Singh v. State of Punjab and another, (2012) 4 RCR (Criminal) 543. It was held therein that the compounding of offence and quashing of criminal proceedings are two separate things and not interchangeable. The two powers, it was said, are distinct and different although the ultimate consequence may be the same. It had authoritatively been ruled that when the offender and the victim had settled their dispute, the High Court in exercise of its inherent powers under Section 482 Cr.P.C. is competent to quash the criminal proceedings even relating to the non-compoundable offences though such a power need to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc.

Question No.2 that was formulated by the Larger Bench was to the effect whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. even after the accused was found guilty and convicted by the trial court though the matter is *sub judice* before the appellate court.

Reliance was placed on the Supreme Court decision in Dr. Arvind Barsaul etc. v. State of Madhya Pradesh and another, 2008 (2) RCR (Criminal) 910: (2008) 5 SCC 794. In the said case, it was held that the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498-A IPC and sentenced to 18 months' imprisonment and his appeal was pending before the Appellate Court. The Supreme Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would be an abuse of the

process of law” and also by invoking its power under Article 142 of the Constitution. This Court in Sube Singh's case (supra) held that since this Court did not possess any power akin to the one under Article 142 of the Constitution, the said decision could not be construed to have vested this Court with such like unparallel power. It was further observed that the magnitude of inherent jurisdiction exercisable by this Court under Section 482 Cr.P.C with a view to prevent the abuse of law or to secure the ends of justice, however, was wide enough to include its power to quash the proceedings in relation to not only the non-compoundable offences notwithstanding the bar under Section 320 Cr.P.C. but such a power, it was held, was exercisable at any stage save that there was no express bar and invoking of such power was fully justified on the facts and circumstances of the case. Genuineness of the compromise and settlement was adverted to and it was ascertained to the satisfaction of the Court and stood established that the compromise arrived at between the parties was genuine, wilful and *bona fide*. Therefore, finding the compromise to be genuine, this Court quashed the proceedings at the stage after conviction of the accused.

Therefore, this Court in exercise of its power under Section 482 Cr.P.C. can, in appropriate cases, invoke its jurisdiction to quash matrimonial disputes even at the appellate stage for the parties to re-settle in life.

In B. S. Joshi v. State of Haryana, (2003) 4 SCC 675, the Supreme Court quashed the matrimonial dispute between the parties for putting a quietus to the dispute. It was held that it was

well settled that the powers under Section 482 Cr.P.C have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Exercise of such power will depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It was held that it was the duty of the Court to encourage genuine settlements of matrimonial disputes.

In Murari Lal Gupta and another v. State of U.P. and another, 2015 (1) RCR (Criminal) 146, Hon'ble the Supreme Court considered the question whether a settlement arrived at between the appellant in the said case and his wife would justify the quashing of criminal proceedings. It was held that there was no dispute that offences under Section 498-A IPC and Dowry Prohibition Act, which were attributed in the said case, were not compoundable. The other offences in the said case, however, were compoundable. It was said that the Courts do not recognize the settlements between the accused and the complainant party for quashing proceedings in cases which were not compoundable under Section 320 Cr.P.C. There was, however, an exception to that rule. That exception comprised of cases where the parties were settling a matrimonial dispute. To give quietus to the controversy between them on all counts, it was said that it had permitted the quashing of criminal proceedings also, no matter the offences may not be compoundable. The case, in the opinion of the Court was a fit case in which that power could be exercised especially when all outstanding issues between the parties were getting resolved. The

fact that the parties had not only decided to actually part company on the basis of the decrees of divorce obtained by them clearly showed that there were no chances of any rehabilitation of the relationship between them. So also the fact that the Family Court had already adjudicated upon the claim which the respondent-wife had made against her former husband and her parents-in-law and determined a definite sum towards compensation payable to the wife on that account was also suggestive of settlement of the civil part of the dispute. There was a claim towards arrears of maintenance which too had been assessed at Rs.3.00 lacs. All told the claim for money had been assessed and the amount agreed fixed at Rs.22.00 lacs out of which a sum of Rs.5.00 lacs had already been deposited in the Supreme Court. The settlement filed before the Court and the undertaking assured the payment of the balance amount also. In the said circumstances, the Court was of the view that upon payment of the balance amount of Rs.17.00 lacs in the manner agreed to between the parties, the proceedings in the criminal case arising out of the FIR in the said case and the domestic violence case filed by the wife could be quashed. Accordingly the appeals were allowed and the order passed by the High Court was set aside.

In Gian Singh v. State of Punjab and another, (supra), referred to above, the Supreme Court in fact laid down the following general principles in the matter of quashing FIR in non-compoundable cases:-

"57. 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 personnel 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."

In Chander Shekher and others v. State of Haryana and another, CrI. Misc. No.M-5737 of 2011 decided on 23.02.2011, this Court quashed the proceedings at the appellate stage placing reliance on Dr. Arvind Barsaul etc. v. State of Madhya Pradesh and another (supra).

In Jitendra Raghuvarshi and others v. Babita Raghuvarshi and another, (2013) 4 SCC 58, the Supreme Court held that though the offences under Section 498-A and 406 IPC are not compoundable under Section 320 Cr.P.C. However, the High Court has power under Section 482 Cr.P.C. to quash the criminal proceedings where the parties mutually settled the dispute. Section 320 Cr.P.C. would not be a bar to exercise the power of quashing of proceedings. It was further held that it was the duty of Courts to encourage genuine settlements of matrimonial disputes, particularly when the same are on considerable increase. Even if the offences are not compoundable and if they are related to matrimonial disputes, the FIR can be quashed.

In the present case, the dispute between the parties, as already noticed, is a matrimonial one. The parties have settled their dispute inasmuch as a decree for divorce by mutual consent

has been passed by this Court on 01.03.2013 and the joint petition CM No.21159-CII of 2012 in FAO No.9-M of 2004 has been allowed and the dispute between the parties has been settled. Meena @ Meenu who is the complainant in the case through her counsel Shri J. S. Toor, Advocate has stated that she has no objection to the quashing of the complaint. Therefore, the settlement that has been reached at between the parties is a genuine one. Sanjeev Kumar, who was the husband of Meena @ Meenu has paid a sum of Rs.7.00 lacs to her and Rs.2.00 lacs to the minor son of the parties namely Prince. It is stated that Sanjeev Kumar has since remarried. As such one of the parties has re-settled even. Therefore, it would be just and expedient, if the criminal proceedings are terminated and a quietus is put to the matrimonial dispute.

In the circumstances, Crl. Appeal No.D-646-DB of 2010 is dismissed as not pressed and Crl. Appeal No.S-2301-SB of 2009; Crl. Appeal No.S-2302-SB of 2009 and Crl. Appeal No. S-2303-SB of 2009 are allowed and the order of conviction and sentence for the offence under Section 498-A IPC is set aside and the appellants in the said appeals are acquitted.

(S.S. Saron)
Judge

(Ramendra Jain)
Judge

29.04.2015
A.Kaundal