

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.23525-26 of 2015 in
CRA-S-3053-SB-2009 (O&M)
Date of decision : 24.08.2015

Rajesh Kumar

...Appellant

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harsh Aggarwal, Advocate,
for the appellant.

Ms. Harsimrat Rai, DAG, Punjab.

Mr. Kuldeep Joshi, Advocate,
for complainant/respondent Nos.2 and 3.

JITENDRA CHAUHAN, J.

CRM No.22525 of 2015

CRM application is allowed as prayed for and the amended
memo of parties is taken on record.

CRM No.22526 of 2015 in/and
CRA-S-3053-SB-2009 (O&M)

By way of the filing CRM-22526-2015, under Section
320(5) read with Section 482 of the Code of Criminal Procedure, the
applicant/petitioner seeks compounding of offence and disposal of the
appeal on the basis of the compromise arrived at between the parties.

The learned counsel for the appellant states that the

appellant has not misused the concession of bail. He further states that during the pendency of the present appeal, the parties have entered into compromise, Annexure A-1.

The learned counsel for respondent Nos.2 and 3, admits the factum of the compromise.

The appellant has been convicted under Section 420 IPC for the term of four years along with fine of Rs.7,000/-. The sentence of the appellant has already been suspended vide order dated 27.04.2011. Para No.4 of the compromise, Annexure A-1 reads as under:-

“(4) That henceforth, none of the party shall file any legal proceedings against each other. Similarly, the party of the Second Part shall not file any legal proceedings on account of his acquittal in the criminal case against the party of the Ist Part, as well as, the witnesses, as the same shall be solely on the basis of this compromise.”

Section 320(5) Cr.P.C. reads as under:-

“320. Compounding of offences.

(1)XXX

(2)XXX

(3)XXX

(4)XXX

(5) *When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.”*

The appellant was sent to face trial under Sections 364/406/420 IPC, whereas, the learned trial Court recorded the conviction only under Section 420 IPC, which is a compoundable offence.

Hon'ble the Apex Court in Surat Singh's case (supra), has held in para 6 as under:-

“6. We have heard learned counsel for the parties and, in particular, the learned counsel appearing for respondent No.2. He submits that he has compromised the lis with the appellant at her own will. In view of the above, while disposing of this appeal, we accord permission to compound the offences and the effect of this would be the acquittal of the accused with the offences he is charged with.”

In ***Sube Singh Vs. State of Haryana, 2013(4) R.C.R. (Criminal) 102***, a Division Bench of this Court has held thus:-

“(12) The decision in ***Gian Singh’s*** case (*supra*) also approves the view taken by a five-Judge Bench of this Court in ***Kulwinder Singh & Ors. vs. State of Punjab & Anr., 2007(3) RCR (Crl.)1052***.

(13) It is indeed now inarguable to say that the power exercisable by the High Court under Section 482 CrPC for the quashing of criminal prosecution is limited or affected by the provision of Section 320 CrPC.

(14) We may, however, hasten to add that power of the Court under Section 320 CrPC to ‘compound’ an offence on the basis of compromise between the accused and the victim can be invoked only if the subject offence is compoundable. In other words, power under Section 320 CrPC is not exercisable in relation to a case of non-compoundable offence as ruled by the Hon’ble Supreme Court in a string of decisions including (i) ***Surendra Nath Mohanty vs. State of Orissa, (1995) 5 SCC 238***; (ii) ***Bankat vs. State of Maharashtra, (2005) 1 SCC 343***; and (iii) ***Gulab Das & Ors. vs. State of MP, (2011) 10 SCC***

765.

(15) The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 CrPC and pass an appropriate order so as to secure the ends of justice.

Question No.2

*(16) As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 CrPC to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in **Dr.Arvind Barsaul etc. vs. State of Madhya Pradesh & Anr., (2008) 5 SCC 794**, 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 first appellate court. The Apex 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. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.

(17) The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 CrPC with a view to prevent the abuse of law or to secure the ends of justice, however, is 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 CrPC but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.”

The parties have amicably settled the matter in terms of the compromise deed, Annexure A-1. Thus, this Court feels that it will be in the larger of justice if the prayer for compounding the offence, is accepted.

For the reasons recorded above, the present appeal is allowed; the offence under Section 420 IPC, is ordered to be

compounded, on the basis of compromise, Annexure A-1; and FIR No.224 dated 30.08.2006, under Sections 364, 420, 406 IPC, registered at Police Station Banga, and all consequential proceedings arising therefrom, are quashed; and as a consequence thereof, the petitioner stands acquitted of the offence he is charged with.

The petitioner is on bail. His bail bonds shall stand discharged.

24.08.2015
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(JITENDRA CHAUHAN)
JUDGE

Whether referred to reporter : Yes