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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M- 10767 of 2015
Date of Decision:27.7.2015

Tarsem Lal and others

--Petitioners

Vs

State of Punjab and another

--Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Rupinder K. Thind, Advocate,
for the petitioners.

Mr. D.S.Virk, AAG, Punjab.

Mr. Vishal Goel, Advocate,
for respondent No.2.

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), are seeking quashing of FIR No. 278 dated 17.12.2009 under Sections 498-A, 406, 420 of the Indian Penal Code ('IPC' for short), registered at Police Station Nakodar, District Jalandhar. They also pray for quashing of order dated 11.04.2011 (Annexure P-15) passed by the learned Sub Divisional Judicial Magistrate, Nakodar, whereby petitioner No.3-Raghbir Singh was declared proclaimed person. Quashing of the FIR as well as the order dated 11.04.2011 is being sought on the basis of compromise dated 12.03.2015 (Annexure P-3).

Notice of motion was issued and parties were directed to appear before the learned Chief Judicial Magistrate, Jalandhar for

getting their statements recorded so as to enable the learned CJM to record his satisfaction about the genuineness of the compromise. Parties appeared before the learned Chief Judicial Magistrate and made their respective statements. Thereafter, learned Chief Judicial Magistrate, Jalandhar sent his report dated 17.04.2015, which is available on record. Learned Chief Judicial Magistrate has found the compromise to be a genuine one.

Regarding impugned order (Annexure P-15) whereby petitioner No.3 was declared proclaimed person, learned counsel for the petitioners submits that petitioner No.3, who is the husband of complainant-respondent No.2 was already residing in the United States of America, even at the time of registration of the impugned FIR. In fact, complainant herself has stated this fact that petitioner No.3 was already residing in USA. She places reliance on judgments of this Court in **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011(2) RCR (Criminal) 453, Mehar Singh and another Vs. State of Punjab, 2010(2) RCR(Criminal) 167 and Balbir Singh Vs. State of Punjab and another, 2011(3) RCR(Criminal) 234** in support of her contentions. Learned counsel for the petitioners concluded by submitting that since the parties have now arrived at an amicable settlement and as a consequence thereof, divorce has taken place vide judgment dated 29.11.2011 (Annexure P-2) besides the parties have suffered their statements before the learned Chief Judicial Magistrate, Jalandhar, the impugned order dated 11.04.2011 (Annexure P-15) is also liable to be set aside.

Learned counsel for the complainant-respondent No.2

submits that he has got instructions to say that let the present petition be allowed, in view of the compromise already arrived at between the parties.

The factual as well as legal aspect of the matter could not be denied by the learned State counsel also and rightly so, it being a matter of record.

Having heard the learned counsel for the parties and after going through the record of the case, this Court is of the considered opinion that it is a fit case for exercising the inherent jurisdiction of this Court under Section 482 Cr.P.C., so as to secure the ends of justice. It is so said because the parties have arrived at an out of Court settlement by way of compromise (Annexure-P3). The compromise is without any pressure and a genuine one. In such a situation, continuation of the prosecution would result in sheer abuse of process of law.

The above said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court of India in **Shiji @ Pappu and others versus Radhika and another, 2012 (1) RCR (criminal) 9** and also from the larger Bench judgment of this Court in **Kulwinder Singh and others versus State of Punjab and another reported as 2007 (3) RCR (criminal) 1052**. The observations made by the Hon'ble Supreme Court in para 13 of the judgment in **Shiji's** case (supra), which can be gainfully followed in the present case, read as under:

“It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself

no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. 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 one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. 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 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. 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.”

The law laid down by the Hon'ble Supreme Court in **Shiji's** case (supra) has been further reiterated by the Hon'ble Supreme Court in its later judgments including in the cases of **Jayrajsinh Digvijaysinh Rana v. State of Gujarat and another, 2012 (12) SCC 401, Gold Quest International Private Limited v. State of Tamil Nadu & Ors., 2014 (4) RCR (Crl) 206, Manohar Singh v. State of Madhya Pradesh and another, 2014 AIR (SC) 3649 and Narinder Singh and others v. State of Punjab and another, 2014 (6) SCC 466.**

Reverting back to the facts of the present case, this Court has satisfied itself that the compromise arrived at between the parties is a genuine one. They have got their statements recorded before the learned trial court, without any pressure. In view of the genuine compromise arrived at between the parties and also in view of the report received from the learned trial court, this Court feels no hesitation to conclude that the continuation of the prosecution any

further would be nothing but sheer abuse of the process of law. It would result in wastage of valuable time of the Court because no chance of conviction is left.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned and to secure the ends of justice, FIR No.278 dated 17.12.2009 registered under Sections 498-A, 406 and 120 IPC at Police Station Nakodar District Jalandhar and the consequential proceedings arising therefrom including the impugned order dated 11.4.2011 (Annexure P-15) are ordered to be quashed, however, qua the petitioners only.

Resultantly, with the above-said observations made, the instant petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

27.7.2015
vandana