

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-10898 of 2014
Date of Decision : 23.3.2015

Sandeep Singh and othersPetitioners

Vs.

State of Punjab and anotherRespondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. P.K.S. Phoolka, Advocate for the petitioners.
Mr. D.S. Virk, AAG, Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Petitioners seek quashing of FIR No.133 dated 20.10.2013 under Section 406 IPC, registered at Police Station Dayalpura, Distt. Bathinda, alongwith consequent proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 13.11.2014 of A.P. Singh, District Controller, Food Civil Supplies and Consumer Affairs, Bathinda, has been filed on behalf of the respondent no.2.

Learned counsel for the petitioners submits that since the total amount in dispute has been paid by the petitioners, alongwith interest and the respondent-department does not want to pursue the matter any further, impugned FIR alongwith consequential proceedings arising therefrom deserve to be

quashed.

Faced with the above, learned counsel for the State, on instructions from AFSO, Japtej Singh, Bhatinda, submits that in view of the averments taken in para 5 of the affidavit, petitioners have paid the entire amount alongwith interest. He further submits that the complainant department does not intend to pursue the matter against the petitioners any further.

Having heard learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the peculiar fact situation as noticed herein above, this court is of the considered opinion that the present petition deserves to be allowed. It is so said, because in view of the reply filed on behalf of the respondent, no chance of conviction is left and allowing the criminal proceedings to continue would amount abuse of process of law. Having said that, this court feels no hesitation to conclude that to secure the ends of justice and also to avoid misuse of process of law, the impugned FIR as well as the proceedings arising therefrom are liable to be quashed.

The abovesaid view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **Shiji @ Pappu and others Vs. Radhika and another**, 2012 (1) RCR (Crl.) 9 and from the Larger Bench of this court in **Kulwinder Singh and others Vs. State of Punjab and another** reported as 2007 (3) RCR (Crl.) 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.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as Full Bench of this court, this court is of the considered view that continuation of criminal proceedings against the petitioners would be sheer wastage of valuable time of the court, because no chance, whatsoever, is left for conviction of the petitioners.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this court is of the considered view that the present petition deserves to be allowed.

Consequently, instant petition is allowed and the impugned FIR 133 dated 20.10.2013 under Section 406 IPC, registered at Police Station Dayalpura,

Distt. Bathinda, as well as consequent proceedings arising therefrom are ordered to be quashed, qua petitioners only.

Disposed of, accordingly.

23.3.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE