

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

Criminal Misc. No. M-18191 of 2015
Date of decision: October 20, 2015

Kuldeep @ Goldy and others

....Petitioners

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. Vivek Rattan, Advocate for the petitioners.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Amarjeet Singh, Advocate for respondent No.2.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. by petitioners, namely, Kuldeep @ Goldy, Khem Raj, Krishan Chand, Karamjit, Amarjit Pal, Jai Gopal and Avtar Sharma for quashing of FIR No.226 dated 20.09.2013 registered under Sections 341, 323, 325, 149 IPC at Police Station Sadar Dhuri, District Sangrur and other proceedings arising therefrom on the basis of compromise arrived at between the parties.

Learned counsel for the petitioners submits that with the intervention of the relatives and respectables of the village, the dispute

between the parties has been settled by way of compromise and the complainant-respondent No.2 has made a statement on oath in Court that he has no objection in quashing of FIR and other proceedings arising therefrom. Learned counsel also submits that an application was moved before learned Judicial Magistrate Ist Class, Dhuri for compounding of offences but the same was dismissed as offence under Section 149 IPC is not compoundable.

While issuing notice of motion on 28.05.2015, the following order was passed:

“Notice of motion for 20.10.2015.

In the meantime, parties are directed to present themselves before the Trial Court on 22.7.2015 or any other date convenient to the Court for recording their statements with regard to the compromise. The Trial Court is directed to record the statements of both the parties to its satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. The Trial Court is further directed to send a report alongwith statements of the parties with regard to the validity or otherwise of the compromise effected between the parties and intimate whether any other case is pending against either of the parties or not before the next date of hearing.”

In response to the aforesaid direction, the parties appeared before learned Judicial Magistrate Ist Class, Dhuri and their statements were recorded. A report has been sent by the Judicial Magistrate Ist Class, Dhuri wherein, the factum of compromise has been affirmed. It

has been mentioned therein that the dispute between the parties has been settled by way of compromise and the complainant has no objection in quashing of the FIR and other proceedings arising therefrom. It has also been mentioned therein that the parties have compromised the matter without any threat, coercion or pressure. In joint statement made by Kuldeep @ Goldy, Khem Raj, Krishan Chand, Karamjit, Amarjit Pal, Jai Gopal and Avtar Sharma, which has duly been signed by them, it has been stated that the compromise is in the interest of the parties.

Learned State counsel submits that the case is fixed before the trial Court for framing of charges.

Heard arguments advanced by learned counsel for the parties and have also gone through the documents available on record including statement of the parties.

Since the dispute between the parties has been settled by way of compromise and the complainant has no objection in quashing of the FIR on the basis of compromise, continuation of proceedings would be a futile exercise as the complainant is not going to support the case of the prosecution and that would not only be mere wastage of the valuable time of the Court but it would also not be in the interest of both the parties. Moreover, the purpose of compromise is to maintain peace and harmony in the relations.

Offences under Section 341, 323, 325 IPC are compoundable whereas offence under Section 149 IPC is non-compoundable. This Court has inherent powers under Section 482 Cr.P.C. to quash the criminal proceedings even in non-compoundable

offences on the basis of compromise.

A larger Bench of this Court in ***Kulwinder Singh vs State of Punjab 2007(3) RCR Criminal 1052*** has also observed that the proceedings can be quashed even in case of non-compoundable offences, in case, the compromise is there between the parties. The observations of this Court are reproduced as under :-

“ Criminal Procedure Code, Section 320(9) – Criminal Procedure Code, Section 482 – Compounding of offences which are non-compoundable under Section 320(9) Cr.P.C. - Offence non-compoundable, but parties entering into compromise-High Court has power under Section 482 Cr.P.C allow the compounding of non-compoundable offence and quash the prosecution where the High Court felt that the same was required to prevent the abuse of the process of any court or to otherwise secure the ends of justice – This power of quashing is not confined to matrimonial disputes alone.”

The Hon'ble Apex court in ***Gian Singh vs. State of Punjab and another 2012(4) RCR (Criminal) 543*** has laid down that compounding of offence and quashing of criminal proceedings are two separate things and are not interchangeable. It has also been mentioned that two powers are distinct and different but ultimate consequence may be the same. It has also been held that where the offender and victim have settled their dispute, the High Court in exercise of its inherent power under Section 482 Cr.P.C is competent to quash the criminal proceedings even in case of non-compoundable offences. No doubt, the powers under Section 482 Cr.P.C are to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc. The Apex Court has held as under :-

“ It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceedings or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crimedoeer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or

other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

The aforesaid decision in ***Gian Singh's case (supra)*** finds support with the view taken by a five-Judge Bench of this Court in ***Kulwinder Singh's case (supra)***.

Accordingly, the present petition is allowed and FIR No.226 dated 20.09.2013 registered under Sections 341, 323, 325, 149 IPC at Police Station Sadar Dhuri, District Sangrur as well as other proceedings arising therefrom qua petitioners, namely, Kuldeep @ Goldy, Khem Raj, Krishan Chand, Karamjit, Amarjit Pal, Jai Gopal and Avtar Sharma are hereby quashed.

October 20, 2015
sonia g.

(DAYA CHAUDHARY)
JUDGE