

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-21082-2015
Date of decision:4.9.2015

Yadwinder Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.Jaswinder Singh, Advocate for the petitioners.

Mr. K.D.Sachdeva, Addl. A.G., Punjab.

Mr.V.S.Rana, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 12.5.2015 passed by the learned Sub-Divisional Judicial Magistrate ('SDJM' for short), Budhlada, whereby cancellation report presented by the investigating agency under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short), was not accepted and after taking the cognizance, it was ordered to be registered as police challan, petitioners have approached this Court by way of instant petition under Section 482 Cr.P.C., for quashing the impugned order.

Notice of motion was issued and pursuant thereto, learned counsel for the State as well as learned counsel for respondent No.2 put appearance.

Learned counsel for the petitioners submits that the matter was

compromised between the parties and as a consequence thereof, the complainant made his statement vide Annexure P-4. Thereafter cancellation report dated 2.6.2014 (Annexure P-5), which was a self-contained document, was prepared on the basis of a detailed enquiry report dated 20.3.2014 (Annexure P-6). The complainant again made a statement vide Annexure P-7 dated 9.7.2014 that he was satisfied with the cancellation report. However, the learned SDJM, Budhlada, vide his order dated 6.9.2014 (Annexure P-8) directed the investigating agency for further investigation. He would next contend that in compliance of the order dated 6.9.2014, further investigation was carried out by the investigating agency.

Again, cancellation report dated 28.11.2014 was prepared vide Annexure P-9. Annexure P-1 is the impugned FIR, whereas Annexure P-2 was a copy of written compromise between the parties. He also refers to an order dated 17.1.2014 (Annexure P-3) passed by this Court in CRM-M-40360-2013 (Yadwinder Singh and others v. State of Punjab and another), which was a petition seeking quashing of this very impugned FIR, on the basis of compromise, but it was withdrawn for the reason that accused-petitioner No.2, who is father of petitioners No. 1 and 3, was not signatory to the compromise. He further submits that in such a situation, the learned SDJM has exceeded his jurisdiction, while not allowing the parties to compound the offences and the impugned order was patently illegal. He prays for setting aside the impugned order, while allowing the present petition.

Learned counsel for State as well as learned counsel for respondent-complainant were ad idem that the matter has been

compromised between the parties vide Annexure P-2 and thereafter the complainant made his statement (Annexure P-4), as well as agreed with the cancellation report vide his statement (Annexure P-7). They still do not oppose the instant petition and rightly so, because the matter had already been amicably settled between the parties.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the peculiar facts and circumstances of the case noted above, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

A bare reading of the numerous documents available on the record, including copy of impugned FIR, copy of compromise, statement of the complainant, detailed enquiry report, two cancellation reports as well as the impugned order, would leave no manner of doubt that the learned Magistrate has proceeded on a wholly misconceived and perverse approach, while passing the impugned order. It seems that the learned Magistrate could not appreciate the importance of an amicable settlement between the parties, which is the need of hour.

Most of the courts, throughout the country, are over burdened. In such a situation, it should be the endeavour of every court of law that wherever it is feasible and possible to make the parties arrive at an amicable settlement, sincere efforts must be made to facilitate the parties, to arrive at an amicable settlement. However, in the present case, interestingly, it is

other way round. The parties have arrived at an amicable settlement and thereafter cancellation report was prepared twice over, but it has not been accepted by the learned Magistrate, without there being any reason, much less justified reason. Having said that, this Court feels no hesitation to conclude that the impugned order cannot be sustained.

A bare reading of the impugned order would show that there is not even a passing reference of the amicable settlement, arrived at between the parties vide Annexure P-2. Further, the alleged offences were not of serious nature. In such a situation, it can be safely concluded that the learned Magistrate has clearly exceeded his jurisdiction, while passing the impugned order and the same cannot be sustained, for this reason also.

Further, the order dated 17.1.2014 passed by this Court at Annexure P-3, permitting the petitioners to withdraw their CRM-M-40360-2013, would not stand in the way of the petitioners, nor would grant any jurisdiction to the learned Magistrate to pass the impugned order, because that was not an order on merits qua the impugned FIR. In fact, the said order was passed only because petitioner No.2, who is none else but father of petitioners No. 1 and 3, was not signatory to the compromise (Annexure P-2).

That would hardly make any difference. Once the two of his co-accused, who were his sons, were signatory to the compromise and complainant was also signatory to the compromise, even if the third accused was not available at that point of time, because of which he could not put his signatures on the compromise, it would not be an incurable defect in the compromise and the same can be and should be treated as a complete

compromise between the parties.

It is so said because at the time of entering into an amicable settlement with the complainant, petitioners No. 1 and 3 would also be settling the matter on behalf of their co-accused, who was none-else but their father. However, since the learned trial Court has failed to appreciate the above-said factual as well as the legal aspect in the correct perspective, the impugned order cannot be sustained, it being patently illegal order.

On the importance and benefit of an amicable settlement, the above-said view expressed by this Court, also finds support from the judgments of the Hon'ble Supreme Court of India in **Shiji @ Pappu and others versus Radhika and another, 2012 (1) RCR (criminal)** and **Madan Mohan Abbot v. State of Punjab, 2008 (4) SCC 582**. 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 fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, it is unhesitatingly held that the impugned order cannot be sustained. Learned counsel for the State as well as learned counsel for the complainant do not oppose the present petition and rightly so, because there was nothing to oppose in it, as the parties have arrived at an amicable settlement, by way of compromise (Annexure P-2).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found to be a patently illegal order, the same cannot be sustained and the present petition deserves to be accepted.

Consequently, the impugned order dated 12.5.2015 (Annexure P-10) passed by the learned Sub Divisional Judicial Magistrate, Budhlada, is hereby set aside. Parties are permitted to compound the offences by way of an amicable settlement (Annexure P-2). Cancellation report dated 28.11.2014 (Annexure P-9) is accepted and all the consequential proceedings arising out of FIR No.115 dated 21.10.2013 under Sections 342, 332, 186, 506 and 34 IPC registered at Police Station Budhlada, District Mansa, are hereby quashed.

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

4.9.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE