

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

**CRM-M No.22742 of 2015
Date of Decision: 23.09.2015**

**Sarabjit Singh @ Sarbjot Singh and others....Petitioners
Vs
State of Punjab and another ...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.S. Manaise, Advocate
for the petitioners.

Mr. Navdeep Singh, A.A.G., Punjab.

Mr. Gagandeep Singh Manku, Advocate
for respondent No.2.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioners seek quashing of FIR No.41 dated 01.05.2015, registered under Sections 307, 34 IPC and 25, 27, 54, 59 of Arms Act at P.S. City Batala Police, District Batala, along with entire subsequent proceedings on the basis of compromise.

[2]. Contents of the FIR are as under:-

Complainant Jagpreet Singh son of Jaswant Singh Caste Majbi, resident of New Christian Colony, Qadian Chungi, Batala, aged about 20 years, stated that he is the resident of the above said address and studying in B.A. Part-I and his friend Jobanpreet Singh son of Sukhjinder Singh, Jatt, resident of Bhikhowali, P.S. Ghuman Kalan is studying IELTS and is residing with him in his house. On

29.04.2015, he alongwith his friend Jobanpreet were standing opposite Chitti Ground, Batala and Karanbir Singh @ Babbal son of Late Jagjeet Singh, resident of Fatehgarh Churian, presently backside Bhaler Palace, Batala came to them and the very moment started abusing his friend Jobanpreet. Then he also exchanged hot words with him. Then the passerby intervened and stopped them. On 30.04.2015 at about 7:30 p.m., he along with his friend Jobanpreet were standing opposite Hazira Park on Pacca road, that Karanbir Singh above said along with Sarabjit Singh @ Saba son of Kirpal Singh, Caste Jatt, resident of Kohali, P.S. Ghuman, presently residing at Sukhmani Colony, Sangatpur Road, Batala and one boy namely Jass from Mehta who were already known to them, came on one Bullet Motorcycle, which was being driven by Karanbir. They parked the motorcycle near them and all three of them became offensive towards him. Babbal said that, "Yesterday you were very aggressive; today I will mend you." In fear, he tried to slip away, upon which Sarabjit Singh @ Saba above said pulled out a revolver/pistol from his waist and fired at him with intention to kill, upon which he ran away and saved himself. His friend Jobanpreet also ran away in fear. The above said boys have committed excess with him by firing with intention to kill.

On the basis of his statement formal FIR was recorded.

[3]. As per allegations in the FIR the complainant Jagpreet Singh S/o Jaswant Singh has alleged that on 29.04.2015 he along with his friend Jobanpreet Singh were standing opposite Chitti Ground, Batala there Karanbir Singh @ Babbal came to them and started abusing Jobanpreet. He also exchanged hot words with him.

Passerby intervened and stopped the occurrence.

[4]. On 30.04.2015, at about 7:30 p.m., when the complainant and his friend Jobanpreet were standing besides Hazira Park on pacca road, then the accused Karanbir Singh @ Babbal and one boy namely Jass from Mehta came on motorcycle which was being driven by Karambir Singh. Sarabjit Singh @ Saba pulled out a revolver from his waist and fired at the complainant. Complainant ran away and saved his life. His friend also ran way in fear, but nobody was injured in this case.

[5]. During investigation of the case, petitioner No.2 was found to be juvenile. It is a case of no injury. Both the parties were friends. They are living in different villages in different localities. This fact has come in the investigation. Challan was not presented till the hearing of this case.

[6]. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in **Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47,** **Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604** and **State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489,** has summed up the controversy in **State through Special Cell, New Delhi vs. Navjot Sandhu @**

Afshan Guru and others, 2003(2) RCR (Crl.) 860 (SC). The legal position summed up in the said judgment is in the following manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the

Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.”

[7]. Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.) 1052** considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse of process of law. These

powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised *Ex-Debitia, justitia* to prevent abuse of process of Court.

[8]. In **Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604** powers of High Court under Section 482 Cr.P.C., were considered by the Hon'ble Apex Court within certain parameters and guidelines. It was held that such powers should be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice. Possibly there cannot be any defined and channelised mechanism to formalise exhaustive list of cases wherein such powers should be exercised. Still the Hon'ble Apex Court categorised the cases by way of illustration wherein such powers could be exercised on both the aforesaid analogies of preventing abuse of process of law and to secure ends of justice.

“1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except

under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4. *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

[9]. In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of

commercial, financial, mercantile and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise.

In **Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.) 543**, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in the following manner:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim

and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

[10]. The Hon'ble Supreme Court further endorsed the view of

Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.)

543, in **Dimpey Gujraj vs. Union Territory through Administrator, U.T., Chandigarh and others, 2012(6) CTC 829** in a case arising out of offence under Section 307 IPC. The Hon'ble Apex Court while relying upon **Gian Singh's case** (supra) held that the parties can be allowed to compound the offences even though the offences are of non-compoundable nature and are not heinous offences as continuation of such criminal proceedings would amount to abuse of process of law. The criteria as highlighted by the Hon'ble Apex Court is that offences of personal nature which are not serious in nature could be compounded even though the offence is non-compoundable in nature in the light of observations made in **Gian Singh's case** (supra). The Hon'ble Apex Court proceeded to quash the criminal proceedings on the ground that the continuation thereof would tantamount to abuse of process of law as the offences were not heinous in nature showing any extreme depravity nor against the society. The offence being personal in nature was allowed to be compounded in order to bring peace, amity and harmony between the parties. In the circumstances of the case, the offence under Section 307 IPC was allowed to be compounded and the FIR along with other consequential proceedings were quashed.

[11]. The quashing of criminal proceedings in an offence under Section 307 IPC came up for detailed discussion before the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another, 2014(2) RCR (Crl.) 482**. After due consideration the Hon'ble Apex Court formalised the issue of compounding of offences

under Section 307 IPC to say that it is an offence against society and is non-compoundable, but in certain cases the High Court would be guided to give adequate treatment to the settlement between the parties in exercise of inherent powers under Section 482 Cr.P.C. Following principles were laid down in para 31 of the judgment:-

“31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to*

*form an opinion on either of the
aforesaid two objectives.*

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would

not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation,

the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

[12]. In **State of Madhya Pradesh vs. Deepak and others,**

2014(4) RCR (Crl.) 202, the Hon'ble Apex Court has again reiterated the offence under Section 307 IPC being an offence against society and cannot be treated to be private dispute between the parties, however guidelines laid down in **Narinder Singh and others vs. State of Punjab and others, 2014(2) RCR (Crl.) 482** were reiterated after referring to **Gian Singh vs. State of Punjab and another, 2012(4) RCR (Crl.) 543** and other precedents on the point. In pith and substance the view expressed in **Narinder Singh and others'** case (supra) has to be followed, keeping in view the facts and circumstances of each case.

[13]. In nutshell each case has to be considered on its own merits. While exercising inherent powers, High Court has to examine whether possibility of conviction is bleak and continuation of proceedings would put the accused to great oppression and prejudice and would result in futility. Offence under Section 307 IPC falls under the category of heinous offence and generally it is to be treated offence against the State/society and not an individual offence. At the same time High Court would not base its decision merely because offence under Section 307 IPC is mentioned in the FIR or in the charge. It is still open before the Court as to whether insertion of offence under Section 307 IPC is based on evidence or it is just for the sake of incorporation in the FIR.

In a way, Court is empowered to look into the nature of injury sustained by the victim, whether such injury is inflicted on the

vital parts of the body, the nature of weapon used in the crime, medical evidence brought on record in respect of injuries sustained by the victim, place of occurrence and stage of the case are the relevant factors on which this Court can examine as to whether there is strong possibility of conviction or the chances of conviction are bleak and remote. In case of quashing of criminal prosecution arising out of offence under Section 307 IPC, following facts are necessary to be considered for arriving at the conclusion i.e.:-

- (i) Whether offence would remain an offence against State/society or it can be diluted, if weapon used is not deadly weapon,
- (ii) Place where occurrence took place is not publicly exposed so as to exhibit action in open before the society.
- (iii) Medical opinion is such that it aggravated with the passage of time and ultimately brought the offence within the fold of 307 IPC, and
- (iv) the offence is the outcome of any matrimonial discord between the parties.

Consideration of principles highlighted and guidelines framed reveal that the Court has to weigh the culpability on the aforesaid criterion and if the alleged act can be segregated to mean that it was not in public view nor it was exhibited in public view with deadly weapon and if the medical evidence is also based on opinion, evidence highlighting happening or non-happening of particular

event then the offence under Section 307 IPC can be considered for compounding on the basis of compromise.

[14]. It is a case of no injury, petitioner No.2 was found to be juvenile. Only solitary fire has been attributed to petitioner No.1 that too did not hit anyone. The case was at initial stage when it was heard. While applying the principles laid down in **Narinder Singh and others's** case (supra) the indulgence of this Court can be granted in view of the fact that in the compromise, both the parties have amicably resolved their differences, rather a scuffle was stated to have taken place between them on the date of occurrence. No one has fired any shot. The name of petitioner No.1 was given at the instance of someone and no one was having any pistol at the relevant time.

[15]. Since the parties have buried their hatred by means of compromise, therefore, in view of aforesaid chances of conviction of the accused are very bleak. The continuation of proceedings would result in vacuum. No *bona fide* purpose would be served by allowing the proceedings to go on.

[16]. Consequently this petition is allowed. Resultantly, FIR No.41 dated 01.05.2015, under Sections 307, 34 IPC and 25, 27, 54, 59 of Arms Act, P.S. City Batala Police, District Batala, along with entire subsequent proceedings are quashed.

September 23, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE