

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

**CRM-M-26796 of 2013 (O&M)
Date of Decision: 7.5.2015**

Paramjit Singh and another

.....Petitioners

Vs.

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Onkar Rai, Advocate
for the petitioners.

Mr. Daljit Singh Virk, AAG, Punjab.

Mr. Rajiv Joshi, Advocate
for respondent No.2.

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

RAMESHWAR SINGH MALIK J.

CRM-35825 of 2014

Applicant seeks to place on record compromise dated
18.11.2008, arrived at between the parties, as Annexure P-7.

Application is allowed, as prayed for.

CRM stands disposed of.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short), seek quashing of the order dated 4.5.2006 (Annexure P-2), passed by the learned Sub Divisional Judicial Magistrate, Phillaur, in complaint No. 345/1/03 under Sections 326/452/323/506/34 of the Indian Penal Code ('IPC' for short).

Briefly put, facts of the case are that respondent No.2 filed complaint No. 345/1/03 under Sections 326/452/323/506/34 IPC against the petitioners, Sh. Ram Lubhaya-father of the petitioners and Gogi son of Gyan. Since petitioners and respondent No.2 were belonging to the same village, matter was got amicably settled between the parties, outside the court, by way of intervention of respectable persons of the village, vide compromise deed 18.11.2008 (Annexure P-7). Thereafter, parties started living peacefully. Complainant-respondent No.2 suffered a statement before the learned Sub Divisional Judicial Magistrate, that he does not want to proceed with his complaint. Accordingly, vide order dated 20.3.2009 (Annexure P-1), complaint was dismissed as withdrawn.

It is pertinent to note here that vide impugned order dated 4.5.2006 (Annexure P-2), petitioners were declared proclaimed offenders by the learned Sub Divisional Judicial Magistrate, Phillaur. Once the compromise had been arrived at between the parties and based on that, the complaint itself was withdrawn by the complainant, petitioners remained under the bonafide impression that impugned order dated 4.5.2006, declaring them proclaimed offenders would also be no more surviving. However, the abovesaid material fact

about the complaint having been dismissed as withdrawn was not brought to the notice of the court, because of which the police was threatening the petitioners with arrest. That is how, the petitioners have approached this court by way of present petition.

On 16.8.2013, notice of motion was issued by passing the following order:-

“The petitioners have been declared proclaimed offenders vide order dated 4.5.2006 (Annexure P-2). Later on, the complaint was withdrawn by the complainant, as the matter had been settled between the parties.

Notice of motion for 13.1.2014.

In the meantime, the petitioners are directed to appear before the trial Court and submit their bail bonds, which shall be accepted by the trial court to its satisfaction.”

In compliance of the abovesaid order passed by this Court, petitioners surrendered before the learned trial court and applied for bail, which was rightly accepted by the learned Sub Divisional Magistrate, Phillaur, vide order dated 6.1.2014 and the petitioners were released on bail. Copy of the order dated 6.1.2014 passed by the learned trial court was taken on record by this Court, vide order dated 13.1.2014 and the same reads as under:-

“An application has been filed by accused/applicants Paramjit Singh and Surjit Singh for the bail. The said application is accompanied by copy

of the order dated 16.8.2013 passed by the Hon'ble High Court in Criminal Misc.No.M-26796 of 2013.

In view of the said orders passed by the Hon'ble High Court accused/applicants are ordered to be released on bail on their furnishing bail and surety bonds in the sum of Rs. 1,00,000/- with one surety in the like amount.”

In spite of the abovesaid order, learned trial court issued non bailable warrants against the petitioners on 31.3.2014, by passing the following order:-

“Bailable warrant issued against Surjit Singh and Paramjit Singh received back with report residing abroad. I am satisfied that accused cannot be served through ordinary manner. Let non-bailable warrant of accused persons be issued on 10.4.2014.”

Faced with the abovesaid order, petitioners moved CRM-12297 of 2014 before this Court and the abovesaid order dated 31.3.2014 passed by the learned Magistrate was stayed by this Court, vide order dated 21.4.2014. Reply has been filed on behalf of the State. Petitioners have placed on record copy of compromise dated 18.11.2008 as Annexure P-7.

Learned counsel for the petitioners submits that once the matter stood amicably settled the between the parties, followed by the statement suffered by the complainant before the court and based on that, the complaint was dismissed as withdrawn, vide order dated 20.3.2009, there was no scope left for keeping the impugned

order dated 4.5.2006 alive. He further submits that every interim order would come to an end with disposal of the main case. However, since the learned trial court was illegally proceeding against the petitioners, they were left with no other option, except to file the present petition for quashing of the order dated 4.5.2006 (Annexure P-2). He prays for allowing the present petition.

On the other hand, learned counsel for the State, while referring to the reply filed on behalf of respondent No.1, submits that so far as the factum of compromise between the parties was concerned, it was not in the knowledge of respondent No.1. Except this, nothing substantial was submitted by learned counsel for respondent No.1 to oppose to the present petition and rightly so as there was nothing, as such, to oppose.

Similarly, learned counsel for respondent No.2 although could not deny the factum of compromise arrived at between the parties vide Annexure P-7, yet he submits that present petition was liable to be dismissed. He prays for dismissal of the petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant petition deserves to be accepted, for the following more than one reasons.

Firstly, material fact regarding the compromise arrived at between the parties has gone undisputed on record. Once it is so, the accused persons-petitioners were genuinely under this bonafide

impression that once the complainant has suffered the statement that he does not want to proceed with his complaint and the learned court of competent jurisdiction dismissed the complaint as withdrawn, vide order dated 20.3.2009 (Annexure P-1), they were fully justified not to pursue the matter any further, including the impugned order dated 4.5.2006, whereby they were earlier declared proclaimed offenders.

Learned counsel for the petitioners was found justified to submit that petitioners were under the bonafide wrong impression that once the main complaint has been dismissed as withdrawn, earlier interim order passed in the said complaint would not be surviving against the petitioners. Further, in compliance of the abovesaid order dated 16.8.2013 passed by this Court, petitioners surrendered before the learned trial court and they were admitted to bail on their furnishing adequate bail bonds/surety bonds. Thus, petitioners are no more proclaimed offenders.

There was no justification with the learned trial court to issue the non-bailable warrants against the petitioners vide order dated 31.3.2014, which was stayed by this Court, vide abovesaid order dated 21.4.2014. In fact, once the complaint stood dismissed as withdrawn on the statement made by the complainant on the basis of compromise, obviously in the normal course, nothing would be surviving against the petitioners, including the impugned order.

Further, based on the same compromise, petitioners also withdrew their civil suit No. 376/04 dated 11.10.2004 vide order dated 28.3.2009 (Annexure P-6). It was a suit for recovery for an amount of Rs. 1,50,000/- from the defendant-complainant herein. Having said

that, this Court feels no hesitation to conclude that permitting any proceedings out of the complaint filed by respondent No.2 against the petitioners, would be nothing but an abuse of process of law. In this view of the matter, it is just and expedient to quash the impugned order dated 4.5.2006 (Annexure P-2) and also order dated 31.3.2014, with a view to secure the ends of justice.

No other argument was raised.

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

Consequently, the impugned order dated 4.5.2006 passed by the learned Sub Divisional Judicial Magistrate, Phillaur, in complaint No. 345/1/03 filed under Sections 326/452/323/506/34 IPC and order dated 31.3.2014 passed by the learned Sub Divisional Magistrate, Phillaur, are hereby set aside. Petitioners are no more the proclaimed offenders in abovesaid complaint No. 345/1/03.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.5.2015
Ak Sharma