

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

256

Criminal Misc. No.M-25429 of 2014 (O&M)
Date of Decision: 06th February, 2015

Mohd. Arshad @ Ashu and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: Hon'ble Mrs. Justice Daya Chaudhary

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

Present: Mr. Ghulam Nabi Malik, Advocate
for the petitioners.

Mr. T.N. Sarup, Addl. A.G., Punjab.

Mr. Mohd. Imran, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.(Oral)

The present petition under Section 482 Cr.P.C. has been filed on behalf of petitioners, namely, Mohd. Arshad @ Ashu, Mohd. Amjad @ Anju Ustad Pehalwan, Nayeem Ahmed Khan @ Nayeem Khan, Shariq Rana @ Shariq and Kasim Khan @ Kasim for quashing of FIR No. 33 dated 26.04.2014, registered under Sections 365, 341, 342, 323, 506, 148, 149 IPC, at Police Station City-II Malerkotla, Sangrur, on the basis of compromise arrived at between the parties.

Learned counsel for the petitioners submits that the petitioners as well as the complainant are neighbours and with the

intervention of the respectables, a compromise has been arrived at between them and the complainant has no objection in quashing of the FIR and others proceedings arising therefrom. Learned counsel further submits that the purpose of compromise is to maintain peace and harmony in the relations.

Learned counsel for respondent No.2 has also affirmed the factum of compromise.

Notice of motion was issued on 30.07.2014 and the parties were directed to appear before the illaqa magistrate on 08.12.2014 for recording of their statements with regard to compromise. The illaqa magistrate was also directed to send a report as to whether the compromise arrived at between the parties is genuine and without any pressure from either side.

In response to the aforesaid direction, the parties have appeared before the learned Addl. Civil Judge (Senior Division)-cum-Sub Division Judicial Magistrate, Malerkotla and accordingly their statements were recorded. A report has been sent by the learned Addl. Civil Judge (Senior Division)-cum-Sub Division Judicial Magistrate, Malerkotla, wherein, the factum of compromise has been affirmed. The parties to the dispute have specifically stated that the compromise has been arrived at between them and now they do not want to proceed further with the proceedings. It has also been mentioned therein that the compromise is as per their free will and without any pressure from either side. It has also been mentioned in the report that no P.O. proceedings are pending against the parties.

After hearing learned counsel for the parties and on perusal of the statements recorded by the learned Addl. Civil Judge (Senior

Division)-cum- Sub Division Judicial Magistrate, Malerkotla, it is clear that the dispute between the parties has been settled.

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 time of the Court but it would also not be in the interest of both the parties. This Court has power to quash the proceedings 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 crimedoer 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)*.

In the present case also, the parties have compromised

their dispute and the complainant has no objection in quashing of the FIR.

In view of the facts as mentioned above, the present petition is allowed and the impugned criminal proceedings arising out of FIR No. 33 dated 26.04.2014, registered under Sections 365, 341, 342, 323, 506, 148, 149 IPC, at Police Station City-II Malerkotla, Sangrur, as well as all subsequent proceedings arising therefrom qua, petitioners, namely, Mohd. Arshad @ Ashu, Mohd. Amjad @ Anju Ustad Pehalwan, Nayeem Ahmed Khan @ Nayeem Khan, Shariq Rana @ Shariq and Kasim Khan @ Kasim are hereby quashed.

06.02.2015
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(DAYA CHAUDHARY)
JUDGE