

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

CRM M-29040 of 2013

Date of decision : 17.08.2015

Harwant Singh @ Hanta

....Petitioner

V/s

Harbhajan Singh & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Ms. R.K. Manaise, Advocate for the petitioner.

Mr. Ankur Jain, AAG Punjab.

Mr. Gagandeep Singh, Advocate for
Mr. IPS Bhinder, Advocate for respondents no. 1 & 2.

RAJAN GUPTA J.

This is a petition under section 482 Cr.P.C. seeking quashing of FIR No. 55 dated 03.03.2003 registered against the petitioner under sections 304-A IPC at police station Sadar Gurdaspur as also the order passed by the trial court convicting the petitioner for offence under section 304-A IPC.

FIR was lodged on the statement of Harbhajan Singh. He stated that he alongwith his family were part of the procession. As the procession reached near village Nabipur, one mini bus driven in rash and negligent manner hit his son Kapoor Singh. Bus driver fled from the scene. Later his son was taken to Civil hospital, Gurdaspur but he succumbed to his injuries. Investigation ensued thereafter and petitioner was convicted for offence under section 304-A IPC and sentence to undergo rigorous imprisonment for two years.

Learned counsel for the petitioner has prayed for quashing of the FIR as well as order of conviction on the ground that a compromise has been arrived at between the parties. He has relied upon judgment delivered by this court in case **CRM M-9450 of 2015** titled as **Mangal Singh vs. State of Punjab & ors.**

Learned State counsel has vehemently opposed the plea. According to him, offence under section 304-A IPC is non-compoundable. A compromise cannot be effected on behalf of a dead person. He has relied upon judgment reported as **Varinder Kumar vs. State of Punjab & anr., 2012 (4) AICLR 104.**

I find merit in the plea of learned State counsel. In view of judgment in *Varinder Kumar's* case (supra), I feel, no ground for quashing of instant FIR is made out. Relevant para of the said judgment reads as follows:-

"5. Admittedly, the offences under Sections 279 and 304-A IPC are non-compoundable. There is no scope for a Court of law permitting the compounding of such offences merely because the parties have decided to compromise the matter on behalf of a dead person. If the plea taken is accepted then the day is not far away when in a murder case complainant or eye witnesses compromising the matter with the accused will start filing petitions under Section 482 of the Code seeking quashing of the FIR on the basis of compromise. The kin of the victim, that is, respondent No.2 has no right to compound the offences on behalf of the deceased. It is not a case where the inherent power under Section 482 of the Code should be exercised as the quashing of FIR will not prevent the abuse of process of any Court rather it will be abuse of the provision of Section 482 of the Code itself."

In the judgment of the apex court reported as ***Gian Singh Vs. State of Punjab and Anr. 2013 (2) B.L.J. 289***, it has been held that power to quash criminal proceedings may be exercised keeping in view facts and circumstances of each case. The High Court would have due regard to nature and gravity of crime. Heinous and serious offences cannot be quashed, even though victim or victim's family may have settled the dispute with the offender. Such offences are not private in nature but have impact on society (see para 57). Similar view has been expressed in judgment reported as ***Ashok Sadarangani v. Union of India, (2012) 11 SCC 321*** (paras 25 & 27). In a recent judgment delivered by Supreme court reported as ***State of Punjab vs. Saurabh Bakshi 2015(2) RCR (Criminal) 495*** it has been observed as under:-

"17. In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken stage, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a

dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.

18. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy, in Section 304A, Indian Penal Code. We say so with immense anguish.

19. Resultantly, the appeal is allowed to the extent indicated above and the Respondent be taken into custody forthwith to suffer the remaining period of sentence.

In view of facts and circumstances of the case and observations of the Apex court, I am of the considered view that judgment in *Mangal Singh's* case (supra) can be of no help to the case of the petitioner. Besides, it appears that the court directed quashing of FIR when appeal filed by convict was pending before the appellate court. In such circumstances, provisions of section 320(5) would be attracted. A question may, therefore, arise whether this court would quash the proceedings in its inherent jurisdiction when lower appellate court is seized of the matter by way of an appeal. In my considered view, facts of the instant case are not such where scope of inherent jurisdiction needs to be enlarged to that extent. There is, thus, no merit in the petition. Dismissed.

August 17, 2015

Ajay

(RAJAN GUPTA)
JUDGE

Whether to be referred to reporter? (Yes)