

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M No.30107 of 2015

Date of Decision:-24.09.2015

Sunil Kumar @ Sant Kumar.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vipul Dharmani, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab
along with HC Ashraf Khan.

Mr. Arpandeeep Narula, Advocate for the complainant.

JASWANT SINGH, J.(ORAL)

Petitioner-accused and the complainant are both minors and also closely related to each other. Petitioner accused is represented through his mother and the complainant through his father.

Prayer is under section 482 Cr.PC for quashing of FIR No.29 dated 10.04.2015 for offence punishable Section 377 of Indian Penal Code registered with Police Station Kiratpur Sahib, District Ropar and all the subsequent proceedings arising therefrom on the basis of compromise dated 29.06.2015 (Annexure P-3) entered between the parties through their natural guardians.

As per the allegations the father of the complainant is a

labourer and on the night of 9.4.2015, Sunil Kumar accused (petitioner herein) entered the house and tried to commit the offence on his minor son Som Nath. Within minutes of raising of the cry by the boy, the family members intervened.

The petitioner is stated to be in juvenile home after having been arrested.

At the time of hearing both the parties are present in the Court, duly identified by their respective counsel, and their statements acknowledging the terms of the compromise have been recorded separately. It is submitted on behalf of the complainant party that the proceedings be quashed as they do not wish to pursue the proceedings any further.

Learned State Counsel on instructions from HC Ashraf Khan is unable to raise any serious objection in view of the statements recorded in terms of the aforesaid compromise before this Court today whereby the complainant is not willing to support the case of the prosecution which is at the stage of investigation only.

Hon'ble Supreme Court in (2003)4 SCC 675 **B.S. Joshi & Others Vs. State of Haryana & Another** has made it explicitly clear in para 15 of its judgment that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or effect the powers under Section 482 of the Code.

A Full Bench of this Court in **Kulwinder Singh and others v. State of Punjab and another**, 2007(3) RCR (Criminal) 1052 has also held that this Court, in appropriate cases, while exercising powers under Section 482 Cr.P.C., may quash an FIR disclosing the commission of non-

compoundable offences. The relevant extracts read as under:-

“The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C., which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.”

Hon'ble Apex Court in another case in J.T. 2008(9) S.C. 192 **Nikhil Merchant Vs. Central Bureau of Investigation & Another** while relying upon its decision in B.S. Joshi's case(supra) has also held that in view of the compromise arrived at between the parties, the technicalities should not be allowed to stand in the way in the quashing of criminal proceedings and the continuance of the same after compromise between the parties would be a futile exercise.

Similar views were expressed by Hon'ble the Apex Court in **Madan Mohan Abot v. State of Punjab** 2008(4) SCC 582, the relevant extract of which is as under:-

“We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common

sense approach to the matter based on ground of realities and bereft of the technicalities of the law.”

This Court is aware that in such non compoundable offences, this Court should not exercise its jurisdiction under Section 482 Cr.PC for quashing of the same, however, keeping in view the age of the parties, the status of the parties, being close family members and the initial stage of the proceedings, this Court feels that this is a fit case owing to the exceptional circumstances for exercising the jurisdiction under Section 482 Cr.PC.

Accordingly the present petition is allowed & FIR No.29 dated 10.04.2015 for offence punishable under Section 377 of Indian Penal Code registered with Police Station Kiratpur Sahib, District Ropar and the subsequent proceedings arising therefrom are quashed against the petitioner.

**(JASWANT SINGH)
JUDGE**

September 24, 2015
Vinay