

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1128-2007 (O&M)
Date of decision: 27.08.2015

Ashok Kumar

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Randeep Singh, Advocate for
Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

Mr. Ajay Kaushik, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned judgment dated 03.07.2007, passed by learned Additional Sessions Judge (Adhoc)-cum-Presiding Officer, Fast Track Court, Gurdaspur, whereby appeal of the petitioner against conviction was dismissed and the impugned judgment of conviction as well as order of sentence of even date i.e. 19.11.2004, passed by learned Sub Divisional Judicial Magistrate, Pathankot, were upheld.

Shorn of detailed background of the case, which is no more

necessary to be noticed, it would suffice to note that petitioner was convicted by the learned trial Court vide impugned judgment of conviction dated 19.11.2004. Accordingly, he was sentenced to undergo R.I. for a period of one year and to pay a fine of Rs.100/-. In default of payment of fine, he was further ordered to undergo R.I. for a period of 10 days, for an offence under Section 452 of the Indian Penal Code ('IPC' for short). Petitioner was also sentenced to undergo R.I. for a period of three months and to pay a fine of Rs.50/-. In default thereof, he was further ordered to undergo R.I. for 07 days for an offence under Section 426 IPC, vide impugned order of sentence dated 19.11.2004.

Feeling aggrieved, petitioner filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 03.07.2007. Hence this criminal revision petition. The revision petition was admitted for regular hearing and sentence of the petitioner was ordered to be suspended, during the pendency of the revision petition, vide order dated 13.09.2007 passed by this Court.

During the pendency of the present criminal revision petition, parties arrived at an amicable settlement by way of compromise deed dated 23.09.2014 (Annexure P-1). Accordingly, petitioner impleaded the complainant as respondent No.2, vide CRM-34057 of 2014, which was allowed by this Court. Copy of compromise deed was placed on record vide CRM-34058 of 2014. Petitioner sought disposal of the criminal revision petition on the basis of compromise, by moving CRM-34059 of 2014. Notice in this application was issued and parties were directed to appear before the learned trial Court, for getting their statements recorded so as to enable the

learned trial Court, to record its satisfaction on the genuineness of compromise.

Finally, parties appeared before the learned trial Court and got their statements recorded. Accordingly, learned Additional Chief Judicial Magistrate has sent his report dated 28.07.2015 along with statements of the parties, which is available on record. Compromise arrived at between the parties has been found to be genuine.

Learned counsel for the parties are ad idem that parties have decided to bury the hatchet by way of an amicable settlement and they are living peacefully. Learned counsel for the petitioner submits that in view of the law laid down by the Hon'ble Supreme Court in **Narinder Singh and others Vs. State of Punjab and another, 2014 (6) SCC 466** and a larger Bench judgment of this Court in **Kulwinder Singh and others Vs. State of Punjab and another, 2007 (3) RCR (Crl.) 1052**, present petition deserves to be allowed.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant petition deserves to be allowed and the impugned judgments of conviction are liable to be set aside, for the following more than one reasons.

It is a matter of record that the parties have arrived at an amicable settlement by way of abovesaid compromise. Learned counsel for the complainant has also submitted that in view of the compromise arrived at between the parties, he has got no objection in case the instant petition is

allowed. Further, vide report dated 28.07.2015 received from the learned Additional Chief Judicial Magistrate, Pathankot, compromise arrived at between the parties has been found to be a genuine one. In such a situation, it can be safely concluded that petitioner is entitled for acquittal, because the continuation of the conviction of the petitioner would amount to misuse of process of law. Under these circumstances, this Court is of the view that to prevent the abuse of process of Court and also to secure the ends of justice, present one is a fit case for invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., for allowing the present petition.

The abovesaid view taken by this Court also finds support from the law laid down by the Hon'ble Supreme Court in **Narinder Singh's** case (supra). The relevant principles of law laid down by the Hon'ble Supreme Court in para 31 of its judgment in **Narinder Singh's** case (supra), which can be gainfully followed in the present case, read as under: -

“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 to 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.”

Respectfully following the law laid down by the Hon'ble Supreme Court in **Narinder Singh's** case (supra) and applying the same to the

facts of the present case, it is unhesitatingly held that petitioner is entitled for acquittal.

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 and the impugned judgments of conviction are liable to be set aside. Consequently, both the impugned judgments of conviction and order of sentence passed by the learned trial Court as well as the impugned appellate judgment passed by the learned First Appellate Court are hereby set aside. Petitioner is acquitted of the charges framed against him. His bail bonds/surety bonds shall stand discharged.

Resultantly, with the abovesaid observations made and directions issued, instant criminal revision petition stands allowed, however, with no orders as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

27.08.2015
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