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

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Date of decision: 11.05.2015

Amritpal Singh and others

....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. P.S.Ahluwalia, Advocate,
for the petitioners.

Mr. K.S.Sidhu, DAG, Punjab.

Mr. Ajay Kamboj, Advocate for
Mr. P.S.Jammu, Advocate,
for respondent no.2.

PARAMJEET SINGH, J. (ORAL)

This petition has been moved by the petitioners under Section 482 of the Code of Criminal Procedure (in short, 'the Code'), seeking quashing of case FIR No.05 dated 16.01.1999, registered at Police Station Kotwali Nabha, District Patiala, under Sections 323, 308, 342, 506, 148 and 149 of the Indian Penal Code (in short, 'the IPC'), on

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the basis of compromise (Annexure P-2), alongwith all the subsequent proceedings arising therefrom.

Vide order dated 08.09.2014 passed by a Coordinate Bench of this Court, notice of motion was issued and parties were directed to appear before the trial court/Illaq Magistrate on 22.09.2014 to get their statements recorded with regard to compromise and the trial Court/Illaq Magistrate was directed to send the report.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners contends that initially, charge was not framed under Section 308 of IPC, rather the petitioners were charge-sheeted under Sections 342, 325, 323 and 506 read with Section 34 of IPC. Even after summoning under Section 319 of the Code of Criminal Procedure, charge has been framed only under Sections 148, 342, 325, 323 and 506 read with Section 149 of IPC. After passing of 14 years of the incident, the trial Court framed charge against the petitioners for the commission of offence under Section 308 of IPC. Learned counsel further contends that the parties appeared before the trial Court and got their statements recorded voluntarily and without any pressure or coercion. The matter has been amicably settled between the parties. Learned counsel further contends that offence under Section 308 of IPC is not compoundable under Section 320 of the Code, however, this Court has inherent powers to quash the present FIR keeping in view the settlement arrived at between the parties. In support of his contentions,

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learned counsel relies upon judgment of the Hon'ble Supreme Court in ***Jayrajsinh Digvijaysinh Rana vs. State of Gujarat and another*** 2012 (4) R.C.R. (Criminal) 589. Learned counsel further contends that matter has been amicably settled and now, no dispute survives between the parties.

Per contra, learned State counsel submits that offence under Section 308 of IPC is non-compoundable, therefore, present FIR cannot be quashed.

I have considered the rival contentions of learned counsel for the parties.

In compliance of order dated 08.09.2014, learned trial Court has submitted its report vide letter dated 24.09.2014 which indicates that parties appeared before it and got recorded their respective statements with regard to validity of compromise. As per the report, respondents no.2 and 3 suffered separate statements that they have entered into compromise voluntarily, without any threat or pressure and they have no objection, if the FIR is quashed in terms of the compromise Ex.C1.

In ***Jayrajsinh Digvijaysinh Rana's case (supra)***, the Hon'ble Supreme Court has dealt with the similar issue and held as under:

*“8. The above question was recently considered by this Court in **Shiji @ Pappu & Ors. vs. Radhika & Anr., 2011 (6) Recent Apex Judgments (R.A.J.) 2010: 2012 (1) R.C.R. (Criminal) 9 : (2011) 10 SCC 705.** The question posed in that case was “Whether the criminal proceedings*

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in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at.” After adverting to Section 482 of the Code and various decisions, this Court concluded as under:

“17. It is manifest that simply because an offence is not compoundable under Section 320 Criminal Procedure Code is by itself no reason for the High Court to refuse exercise of its power under Section 482 Criminal Procedure Code. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Criminal Procedure Code on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 Criminal Procedure Code.

18. Having said so, we must hasten to add that the plenitude of the power under Section 482

Criminal Procedure Code by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.”

9. *On going through the factual details, earlier decision, various offences under Section 320 of the Code and invocation of Section 482 of the Code, we fully concur with the said conclusion. In the case on hand, irrespective of the earlier dispute between Respondent No. 2- the complainant and the appellant being Accused No. 3 as well as Accused Nos. 1 and 2 subsequently and after getting all the materials, relevant details etc., the present appellant (Accused No. 3) sworn an affidavit with bona fide intention*

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securing the right, title and interest in favour of Respondent No.2 herein-the Complainant. In such bona fide circumstances, the power under Section 482 may be exercised. Further, in view of the settlement arrived at between Respondent No. 2-the complainant and the appellant (Accused No. 3), there is no chance of recording a conviction insofar as the present appellant is concerned and the entire exercise of trial is destined to be an exercise in futility. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power under Section 482 of the Code even in offences which are not compoundable under Section 320, may quash the prosecution. However, as observed in Shiji (supra), the power under Section 482 has to be exercised sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In other words, the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.

10. In the light of the principles mentioned above, inasmuch as Respondent No. 2-the Complainant has filed an affidavit highlighting the stand taken by the appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the appellant herein (Accused No. 3) is concerned.

11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police

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Station, Ahmedabad for offences punishable under Sections 467, 468, 471, 420 and 120-B of IPC insofar as the appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above.”

By invoking the power under Section 482 of the Code, this Court may quash the prosecution qua the offences which are not compoundable under Section 320 of the Code. In ***Jayrajsinh Digvijaysinh Rana's case (supra)***, the Hon'ble Supreme Court has held that the power under Section 482 of the Code has to be exercised sparingly and only in cases where continuance of the prosecution would be a sheer abuse of process of law. Admittedly, the parties have arrived at compromise (Annexure P-2) and continuance of the prosecution against the petitioners would be nothing but an abuse of the process of law.

Resultantly, in view of compromise (Annexure P-2) and keeping in view the law laid down by the Hon'ble Apex Court in the case of ***Madan Mohan Abbot vs. State of Punjab, 2008(2) RCR (Criminal) 429, Gian Singh vs. State of Punjab and another, 2012(4) R.C.R. (Criminal) 543, Jayrajsinh Digvijaysinh Rana's case (supra), Narinder Singh and others vs. State of Punjab and another, 2014(2) R.C.R.(Criminal) 482*** and Full Bench judgment of this Court in the case of ***Kulwinder Singh and others vs. State of Punjab and another, 2007 (3) RCR (Crl.) 1052***, no useful purpose would be served in prolonging the litigation, especially when this case does not fall within the category of exceptional cases where this Court should not exercise its inherent

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jurisdictional power to quash the criminal proceedings, as held in **Gian Singh (supra)** and **Narinder Singh and others (supra)**. In the facts and circumstances of this case, it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of the criminal proceedings would amount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and to secure the ends of justice, therefore, it is appropriate that criminal case is put to an end.

The present petition is allowed. FIR No.05 dated 16.01.1999, registered at Police Station Kotwali Nabha, District Patiala, under Sections 323, 308, 342, 506, 148 and 149 of the Indian Penal Code is hereby quashed qua the present petitioners, on the basis of compromise (Annexure P-2), and all the criminal proceedings arising from the said FIR also stand quashed against them.

It is, however, made clear that if the proceedings already stand concluded and conviction recorded in the present case, this order shall be treated non est and, thus, will have no bearing on the conviction and sentence order.

11.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE