

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-33830 of 2014

Date of Decision: March 18, 2015

Pankaj BhatiaPetitioner

Versus

State of Haryana and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Dr.Anmol Rattan Sidhu, Senior Advocate with
Ms.Mandeep Kaur, Advocate for the petitioner.

Mr.MS Sidhu, Additional Advocate General, Haryana.

Mr.Kunal Dawar, Advocate for the complainant.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of CrI.Misc.No.M-33830 of 2014
(Pankaj Bhatia v. State of Haryana and another) and
CrI.Misc.No.M-1598 of 2015 (Rafiq alias Sedur v. State of
Haryana and another).

2. Both these petitions have been filed under Section 482
of the Code of Criminal Procedure (for short 'the Code') seeking
quashing of FIR No.142 dated 18.4.2014, registered under
Sections 306, 363, 370-A of the Indian Penal Code and Section 23
of Juvenile Justice (Care & Protection of Children) Act, 2009,
Section 24 of the Child Labour Act and Sections 3, 33 (89) of the

Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Saran, District Faridabad on the basis of settlement/compromise.

3. The deceased is Moti Murmu who is stated to have committed suicide on 13.4.2014. The impugned FIR was registered on the statement of mother of the deceased, namely, Hasda Khichlia. The complainant had stated that she was a resident of the State of West Bengal but for the last 4-5 months she was working as a maid in Delhi. Her daughter Moti Murmu (deceased) was studying in a school in the village in West Bengal. Allegations are that Rafiq (petitioner in Crl.Misc.No.M-1598 of 2015) who runs Laxmi Placement Agency, Tuglak, Delhi, had allured her daughter and brought her to Delhi and employed her in the house of Pankaj Bhatia (petitioner in Crl.Misc.No.M-33830 of 2014) at Faridabad. Complainant alleged that she was not in the knowledge of her daughter having been brought to Delhi and the Placement Agency had not taken her permission for doing so. It was further stated that Moti Murmu (deceased) was a minor and as such, could not have been employed to work as a maid. Complainant further stated that she got information as regards her daughter having committed suicide by hanging herself on 13.4.2014, from Police Station Saran, Faridabad and she placed responsibility of the same on the Placement Agency as also the persons with whom deceased had been employed as a maid.

4. This Court has been apprised that after completion of investigation, the challan already stands presented.

5. During the course of hearing of these connected

petitions, learned counsel appearing for the petitioners as also for the complainant had stated in unison that the matter had since been settled and the complainant was ready and willing to give statement as regards having no objection for quashing of the FIR. As such, on 22.12.2014, this Court had directed the statements of the petitioner as well as complainant in Crl.Misc.No.M-33830 of 2014 to be recorded before the trial Court. Likewise, an order dated 4.3.2015 had been passed in Crl.Misc.No.M-1598 of 2015 for recording statements of the parties before the Illaqa Magistrate concerned.

6. Placed on record are the statements of the parties duly recorded before the trial Court towards the settlement having been arrived at. Complainant has categorically stated that she does not want to continue with the criminal proceedings arising from the impugned FIR.

7. The power of the High Court under Section 482 of the Code to quash the proceedings in such offences which are non-compoundable has been recognized by the Hon'ble Supreme Court of India in a catena of judgments. The distinction between the power of compounding of offences given to the Court under Section 320 of the Code and quashing of the criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred under Section 482 of the Code has been explained in **Gian Singh v. State of Punjab and another**, 2012(4) RCR (Criminal) 543, and it was observed as follows:

“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 proceeding 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.

B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an

offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.”

8. In a recent judgment rendered by the Apex Court in **Narinder Singh and others v. State of Punjab and another, 2014 (2) RCR (Criminal) 482**, principles have been culled out for guidance of the High Court while examining a settlement between the parties and exercising the power under Section 482 of the Code. The principles laid down are in the following terms:

“(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."

9. In the present case, it may be useful to advert to certain documents as also statements of witnesses which form part of the challan/final investigation report and stand placed on record as Annexures P4, P5 and P7 along with Crl.Misc.No.M-33830 of 2014.

10. At Annexure P5 is the family ration card reflecting the name of the deceased and showing her age to be 17 years as on 6.6.2011. Prima facie in the year 2014 when she was engaged by the petitioner in Crl.Misc.No.M-33830 of 2014 by availing the services of Laxmi Placement Agency being run by Rafiq i.e. petitioner in Crl.Misc.No.M-1598 of 2015, deceased Moti Murmu was a major. At Annexures P4 and P7 are the statements recorded of Rita Hasda wife of Pavlus i.e. aunt of deceased and members of the Gram Panchayat of the village to which the deceased belonged, respectively. A conjoint reading thereof would show that the deceased was not only a major but was residing with her father, and her mother (complainant in the present case) had no role in bringing up the deceased as she was divorced from her husband i.e. father of the deceased around three years back. Deceased Moti Murmu was stated to be residing with her father in the village and it was her aunt, namely,

Rita Hasda who had brought her to Delhi to explore avenues of employment so as to earn a living. Version of the complainant that deceased had been allured to Delhi by Rafiq i.e. petitioner in Crl.Misc.No.M-1598 of 2015 and without her permission apparently stands falsified.

11. That apart, there was no allegation at the hands of the complainant with regard to any direct act or creation of circumstances which had left the deceased with no other option but to end her life which, in turn, may fall within the mischief of abetment so as to constitute an offence under Section 306 of the Indian Penal Code. The post mortem report placed on record at Annexure P8 along with Crl.Misc.No.M-33830 of 2014 records the opinion of the Medical Board with regard to cause of death as asphyxia due to hanging which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. No external marks of fresh injury were seen on the body which otherwise would have suggested physical assault.

12. In view of the facts and circumstances recorded hereinabove, this Court is of the considered view that the possibility of conviction is remote and bleak. Furthermore, it has gone uncontroverted that the trial is still at the initial stage inasmuch as no prosecution evidence has been led.

13. In an overview of the matter and against the backdrop of the principles laid down by the Hon'ble Supreme Court in **Narinder Singh's** case (supra), this Court is of the considered view that the settlement arrived at between the parties be acted upon as the continuation of criminal proceedings in pursuance to the

impugned FIR would be construed as an abuse of the process of the Court.

14. Accordingly, both the petitions are allowed. FIR No.142 dated 18.4.2014, registered under Sections 306, 363, 370-A of the Indian Penal Code and Section 23 of Juvenile Justice (Care & Protection of Children) Act, 2009, Section 24 of the Child Labour Act and Sections 3, 33 (89) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Saran, District Faridabad and all proceedings emanating therefrom stand quashed.

15. Petitions allowed in the aforesaid terms.

March 18, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether referred to the Reporter? (Yes/No)*