

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37641-2015

Date of Decision: November 3, 2015

Dharampal @ Dharma and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Inderjit Sharma, Advocate,
for the petitioners.

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

NARESH KUMAR SANGHI, J (Oral)

Prayer in this petition filed under Section 482, Cr.P.C., is for quashing of FIR No. 125, dated 14.10.2015 (Annexure P-1), for the offence punishable under Section 306, IPC, registered at Police Station, City, Gurdaspur, and all the consequential proceedings arising therefrom, on the basis of compromise, dated 26.10.2015 (Annexure P-2).

The brief facts of the case are that respondent No. 2, Ashwani Kumar, lodged the impugned FIR alleging that he was a

resident of village Kunta, Police Station, Khojpur, District Gurdaspur, and performing private job at Pathankot. On 13.10.2015, at around 7:15 p.m., when he was coming back from Pathankot by train, his wife Mamta called on his mobile phone and told him that 'daddy was saying to her that driver of Tempo No. 2049, namely, Dharma, resident of Gadhriyan, driver of Tempo No. 3022, namely, Tara, resident of Cinema Road, Gurdaspur, driver of Tempo No. 8034, namely, Shankar, resident of Bathawala, driver of Tempo No. 7604, namely, Dalip Singh, resident of Ram Nagar, gave beatings and insulted him (his father) and he was feeling very much ashamed due to beatings to him and that his father after consuming some poisonous substance was vomiting. After arranging a conveyance his wife had taken his father to Civil Hospital, Gurdaspur, for treatment and that he might come to hospital directly. At night, when he reached at Emergency Ward at Civil Hospital, Gurdaspur, he noticed that his father had died after consuming some poisonous substance. His father had also written suicide note in his hand which he handed over to his wife Mamta before his death.

Learned counsel for the petitioners contended that the time and date of beating is not mentioned; *mens rea* was missing at the time of the incident; respondent No. 2/informant

had effected a compromise with the petitioners due to sincere efforts of the well wishers of both the sides; respondent No. 2/ informant had no ill-will against the petitioners, therefore, the impugned FIR be quashed in view of compromise effected between the petitioners and respondent No. 2. To buttress his submissions, learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **M.Mohan and others v. State represented by the Deputy Superintendent of Police, 2011 (2) Criminal Court Cases 001 (SC).**

I have heard learned counsel for the petitioners and with his able assistance gone through the material available on record.

The petitioners have been charged for the offence punishable under Section 306, IPC. After thorough investigation, the investigating agency presented the charge-sheet. The learned Trial Court after finding a *prima facie* case, has framed the charge.

Learned counsel for the petitioners has heavily placed reliance on the judgment of a 5-Judge Bench of this Court in the matter of **Kulwinder Singh and others v. State of Punjab and another, 2007 (3) RCR (Criminal) 1052.** In the said case,

the Hon'ble Larger Bench held that while exercising jurisdiction under Section 482, Cr.P.C., the High Court can quash the criminal proceedings on the basis of compromise, even if the offence was non-compoundable. However, it was cautioned that such powers had to be exercised with caution and care, after examining the facts and circumstances of each case.

In the matter of **Kulvir Singh v. State of Punjab and others** (CRM-M-22257-2014, decided on 2.12.2015), a co-ordinate Bench of this Court while relying upon **Varinder Kumar v. State of Punjab and another**, 2012 (4) AICLR 104, and also discussing **Kulwinder Singh's case (supra)**, dismissed the petition for quashing of the FIR for the offence punishable under Section 304-A, IPC, on the basis of compromise. In **Varinder Kumar's case (supra)**, this Court held as under:-

“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.”

Similar is the proposition in the case in hand. The FIR for committing the offence punishable under Section 306, IPC, cannot be quashed on the basis of the compromise.

In the matter of **Gian Singh v. State of Punjab and another**, 2012 (4) R.C.R. (Criminal) 543 (SC), it was held that the proceedings relating to serious offences involving public interest should not be quashed on the basis of compromise.

So far as the alternative argument of the petitioners that on the basis of facts and circumstances of the case, the gravamen of Section 306, IPC, is not attracted, is also devoid of force. A bare perusal of the FIR would reveal that Mahinder Pal (since deceased) was severely beaten up by the petitioners and out of frustration he consumed poisonous substance and died. He had also left behind a suicide note which was taken into possession by the police. During investigation the allegations were found to be substantiated and after filing of the charge-

sheet, learned Trial Court found that *prima facie* case was made out for framing the charge.

At this stage, it would be very difficult for this Court to conclude that the petitioners had not abetted Mahinder Pal to commit suicide.

The judgment in the matter of **M. Mohan (supra)**, cited by learned counsel for the petitioners, is entirely on different facts and, as such, would not be applicable to the facts and circumstances of the present case.

There is no merit in the present case and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

November 3, 2015
Pkapoor