

**Sr. No.223
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRR No. 2097 of 2015
Date of Decision: 29.10.2015**

Ashwani Kumar

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ritesh Pandey, Advocate,
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

RAMESHWAR SINGH MALIK, J.

Present Criminal Revision Petition is directed against the impugned judgment of conviction and order of sentence of even date 10.04.2012, passed by the Judicial Magistrate Ist Class, Gurdaspur and also the impugned appellate judgment dated 17.04.2015 passed by the learned Additional Sessions Judge, Gurdaspur, whereby the appeal of the petitioner was dismissed and his conviction as well as sentence were upheld.

Notice of motion was issued and sentence of the petitioner was suspended.

During the pendency of the present petition, parties arrived at an amicable settlement by way of a compromise. Thereafter, on 22.09.2015, following order was passed by this Court:

*“Learned counsel for the petitioner as well as
learned counsel for respondent No.2 are ad-idem that*

during pendency of the present petition, the matter has been amicably settled between the parties. They are further agreed that two other legal representatives of Smt. Prem Lata have authorised respondent No.2 namely; Suresh Kumar to make a statement on their behalf, as well.

In view of the above, parties are directed to appear before the learned Chief Judicial Magistrate, Gurdaspur, on or before 29.09.2015 for getting their statements recorded on the genuineness of compromise and thereafter the learned Chief Judicial Magistrate, Gurdaspur, shall send his report to this Court before the next date of hearing.

Parties shall be at liberty to furnish the compromise deed as well as power of attorneys given by two other legal representatives of Smt. Prem Lata in favour of respondent No.2 namely; Suresh Kumar before the learned Chief Judicial Magistrate, Gurdaspur, at the time of making their statements.

List on 29.10.2015.”

In compliance of the above said order, report dated 01.10.2015 from the learned Chief Judicial Magistrate, Gurdaspur has been received, verifying the fact that the compromise arrived at between the parties was a genuine one. In this view of the matter, detailed factual background of the case is no more required to be noticed herein.

Once the parties have amicably settled the matter and are living peacefully, the instant petition deserves to be accepted and the impugned judgments of conviction as well as order of sentence are liable to be set aside. In this regard, support can be drawn from the

law laid down by the Hon'ble Supreme Court in its recent judgment in the case of **Narinder Singh and others Vs. State of Punjab and another 2014 (6) SCC 466.**

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court of India in **Shiji @ Pappu and others versus Radhika and another, 2012 (1) RCR (criminal) 9** and also from the larger Bench judgment of this Court in **Kulwinder Singh and others versus State of Punjab and another, 2007 (3) RCR (criminal) 1052.** The observations made by the Hon'ble Supreme Court in para 13 of the judgment in **Shiji's** case (supra), which can be gainfully followed in the present case, read as under:

“It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. 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 one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. 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 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. 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.”

The law laid down by the Hon'ble Supreme Court in **Shiji's** case (supra) has been further reiterated by the Hon'ble Supreme Court in its later judgments including in the cases of **Jayrajsinh Digvijaysinh Rana v. State of Gujarat and another, 2012 (12) SCC 401, Gold Quest International Private Limited v. State of Tamil Nadu & Ors., 2014 (4) RCR (Crl) 206, Manohar Singh v. State of Madhya Pradesh and another, 2014 AIR (SC) 3649 and Narinder Singh and others v. State of Punjab and another, 2014 (6) SCC 466.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above and in view of the law laid down by the Hon'ble Supreme Court in **Shiji @ Pappu's case (supra)** and in **Narinder Singh's case (supra)**, instant petition is allowed. Impugned judgment of conviction and order of sentence of even date i.e. 10.04.2012 passed by the Judicial Magistrate 1st Class, Gurdaspur as well as the impugned appellate judgment dated 17.04.2015, passed by the Additional Sessions Judge, Gurdaspur, are hereby set aside. Petitioner is acquitted of the charges framed against him. Bail bonds/surety bonds of the petitioner shall stand discharged.

Resultantly, with the above said observations made and directions issued, present petition stands allowed, however, with no order as to costs.

29.10.2015

vandana

**(RAMESHWAR SINGH MALIK)
JUDGE**