

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

CRR No.2113 of 2015 (O&M).
Decided on:-October 13, 2015.

Dharamvir alias Babbu and another

.....Petitioners.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Argued by:- Mr. R.S. Manhas, Advocate
for the petitioners.

Mr. P.S. Madahar, AAG, Punjab
for respondent No.1-State.

Mr. Amit Babbar, Advocate
for respondent No.2.

HARI PAL VERMA, J.

Petitioners Dharamvir alias Babbu son of Kishan Chand and Ravi Kumar son of Rattan Chand have filed the present revision petition against the judgment dated 14.5.2015 passed by learned Sessions Judge, Pathankot whereby their appeal against the judgment dated 14.1.2014 passed by learned Additional Chief Judicial Magistrate, Pathankot, was dismissed.

Vide judgment of conviction and order on sentence dated

14.1.2014, the trial Court had sentenced the petitioners as under:

Convict Dharamvir alias Babbu:

<u>Offence under Section/s</u>	<u>Sentence Awarded</u>
148 of IPC	To undergo RI for a period of two years.
323 of IPC	To undergo RI for a period of one year.
324 read with Section 149 of IPC	To undergo RI for a period of two years.
325 read with Section 149 of IPC	To undergo RI for a period of three years and to pay a fine of Rs.200/-. In default of payment of fine to undergo RI for a period of 30 days.
326 read with Section 149 of IPC	To undergo RI for a period of three years and to pay a fine of Rs.200/-. In default of payment of fine to undergo RI for a period of 30 days.

Convict Ravi Kumar:

<u>Offence under Section/s</u>	<u>Sentence Awarded</u>
148 of IPC	To undergo RI for a period of two years.
323 read with Section 149 of IPC	To undergo RI for a period of one year.
324 of IPC	To undergo RI for a period of two years.
325 read with Section 149 of IPC	To undergo RI for a period of three years and to pay a fine of Rs.200/-. In default of payment of fine to undergo RI for a period of 30 days.
326 of IPC	To undergo RI for a period of three years and to pay a fine of Rs.200/-. In default of payment of fine to undergo RI for a period of 30 days.

This Court on June 04, 2015 recorded the contention of the learned counsel for the petitioners vide which he did not press this petition

on merits, rather confined his arguments only to the extent of quantum of sentence. Accordingly, vide order dated August 17, 2015, the complainant, namely, Karnesh Kumar son of Rattan Chand, resident of Mohalla Kashmiri, Sujanpur was ordered to be impleaded as a party.

Briefly stated, FIR No.39 dated 13.3.2009 under Sections 326, 325, 324, 323, 148 and 149 IPC was registered against the petitioners at Police Station Sujanpur on the allegations that petitioner No.2 Ravi Kumar voluntarily caused grievous hurt to Karnesh Kumar by means of Datar, which is a sharp edged weapon and instrument of cutting, whereas co-accused Joginder Pal voluntarily caused grievous hurt to Mukesh Kumar with knife from blunt side and also caused hurt to Karnesh Kumar with knife. Another co-accused Naresh Kumar alias Kaka voluntarily caused hurt to Karnesh Kumar with Tokka, a sharp edged weapon. Accused Kishan Chand and petitioner No.1 Dharamvir alias Babbu voluntarily caused hurt to Karnesh Kumar and Mukesh Kumar with Datar and Dang. As such, the accused being the members of unlawful assembly and in prosecution of common object of that assembly caused injuries to above said persons. The accused were arrested and statements of witnesses were recorded.

After completion of formalities of the investigation, the challan was prepared and presented in the Court.

The copies of challan were supplied to the accused free of costs as envisaged under Section 207 Cr.PC and finding a prima-facie case, the

charge was framed against them under Sections 148, 326, 325, 324 and 323 read with Section 149 IPC. The accused pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as 7 witnesses i.e. Karnesh Kumar as PW1, Mukesh Kumar as PW2, SI Bikram Singh as PW3, Dr. Satish Sharma as PW4, SI Gurbacahn Singh as PW5, Dr. Harsh Mahajan as PW6 and ASI Sham Lal as PW7.

After completion of evidence of prosecution, statements of accused under Section 313 Cr.PC were recorded wherein all incriminating evidence appearing against them from the prosecution side was put to them to which they pleaded false implication and innocence. However, the accused did not lead any evidence in their defence and closed the same.

While deciding the case, the trial Court had determined the following points involved in the case:

- i. Whether on 11.3.2009 at about 6.00 PM in the area of bridge No.4 Sujampur all the accused were members of unlawful assembly armed with deadly weapons?
- ii. Whether on the same date, time and place in prosecution of their common object, accused Ravi Kumar voluntarily caused grievous hurt to Karnesh Kumar by means of datar, which is sharp edged weapon and instrument for cutting?
- iii. Whether on the same date, time and place in prosecution of their common object accused Joginder Pal voluntarily caused grievous hurt to Mukesh Kumar with knife from reverse side?
- iv. Whether on the same date, time and place in prosecution of their common object accused Joginder Pal voluntarily caused hurt to Karnesh Kumar wife knife, sharp edged weapon?

- v. Whether on the same date, time and place in prosecution of their common object accused Ravi Kumar voluntarily caused hurt to Karnesh Kumar with datar?
- vi. Whether on the same date, time and place in prosecution of their common object accused Naresh Kumar alias Kaka voluntarily caused hurt to Karnesh Kumar with Tokka, sharp edged weapon?
- vii. Whether on the same date, time and place in prosecution of their common object accused Kishan Chand and Dharambir alias Babbu voluntarily caused hurt to Karnesh Kumar and Mukesh Kumar with datar from the blunt side and dang respectively?

The trial Court vide judgment dated 14.1.2014 convicted and sentenced the petitioners-accused in the manner stated hereinabove.

The aforesaid judgment of conviction and order of sentence dated 14.1.2014 was made subject matter of challenge by way of appeal before learned Sessions Judge. However, the appellate Court vide judgment dated May 14, 2015 dismissed the appeal with modification that sentence awarded to petitioner No.1 Dharamvir under Section 325 read with Section 149 IPC be considered as sentence under Section 325 IPC. The petitioners were ordered to be taken in custody. It is in these circumstances that the petitioners have filed the present revision petition impugning their conviction and sentence ordered by learned trial Court and affirmed by learned appellate Court.

During the pendency of the present revision petition, the

petitioners have filed CRM No.22207 of 2015 for placing on record the compromise dated 27.6.2015 (Annexure A-1). The said compromise was taken on record vide order dated September 16, 2015. Thus, the petitioners have modified the relief prayed in the present revision petition in the light of compromise dated 27.6.2015.

As per the compromise entered between the petitioners-accused, namely, Dharamvir @ Babbu and Ravi Kumar on the one side and complainant Karnesh Kumar on the other side, both parties are resident of the same locality i.e. Mohalla Kashmiri, Sujanpur, Tehsil and District Pathankot. With the intervention of the respectable persons of the area, they have agreed that the complainant will have no objection if the sentence/conviction of the petitioners-accused is set aside and they may be acquitted of the charges. The compromise has been effected between the parties without any force, influence, pressure or coercion from any quarter. The petitioners also undertook to maintain peace and harmony and will not indulge any one in any litigation arising out of this occurrence as their enmity with each other has come to an end in the light of terms and conditions of the compromise.

Learned counsel for the petitioners has relied upon the judgment passed by Hon'ble Supreme Court in ***Gulab Das and others Versus State of M.P. 2012(1) RCR (Criminal) 220*** wherein the parties entered into settlement during appeal in the Apex Court and sought

permission to compound the offence. In that case, though the Apex Court had reduced the sentence to the period already undergone by the accused as the incident took place 17 years back and the accused were young at that time. In this manner, the Apex Court had reduced the sentence even for offence under Section 307 IPC despite the fact that the accused were convicted and sentenced to undergo RI for three years. Learned counsel has also referred to para No.8 of said judgment which reads as under:

“8. Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant nos.2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a

fine of Rs.300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. More so, the appellants have already served substantial part of the sentence awarded to them.”

I have heard learned counsel for the parties.

This Court in the case of ***Sube Singh and another Versus State of Haryana and another 2013(4) RCR (Criminal) 102*** has considered the compounding of offences at the appellate stage and has observed that even when appeal against the conviction is pending before the Sessions Court and parties entered into a compromise, the High Court is vested unparallel power under Section 482 Cr.PC to quash criminal proceedings at any stage so as to secure the ends of justice and has observed as under:

“15. *The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.*

16. *As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in **Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) R.C.R. (Criminal) 910 : (2008)5 SCC 794**, the unfortunate matrimonial dispute*

was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.

17. *The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non-compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.*

18. xxx xxx

19. xxx xxx

20. xxx xxx

21. *In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of*

the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.

22. *Consequently and for the reasons afore-stated, we allow this petition and set aside the judgement and order dated 16.03.2009 passed in Criminal Case No. 425-1 of 2000 of Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise. Resultantly, the appeal preferred by the petitioners against the above-mentioned order dated 16.03.2009 would be rendered infructuous and shall be so declared by the first Appellate Court at Hisar.”*

Similarly, in the case of ***Baghel Singh Versus State of Punjab*** 2014(3) RCR (Criminal) 578 whereby the accused was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for

two years, the parties entered into compromise during the pendency of the appeal. This Court while relying upon the judgment of ***Lal Chand Versus State of Haryana, 2009 (5) RCR (Criminal) 838*** and ***Chhota Singh Versus State of Punjab 1997(2) RCR (Criminal) 392*** allowed the compounding of offence in respect of offence under Section 326 IPC at the appellate stage with the observation that it will be a starting point in maintaining peace between the parties, such offence can be compounded.

Therefore, while relying upon the aforesaid judgments including the judgment passed by this Court in ***CRM-M-31282 of 2014*** decided on 9.9.2015 titled as ***Angrej Singh and others Versus State of Punjab and another*** and considering the compromise dated 27.6.2015 (Annexure A-1), this Court feels that ends of justice would be met if the sentence awarded to the petitioners is reduced to the period already undergone by them.

Admittedly, the FIR was registered on 13.3.2009 and the petitioners are facing the agony of trial for the last more than six years. This Court is of the view that the settlement arrived at between the parties is a sensible step and will benefit not only the parties but the society as well. It will give quietus to the controversy and rehabilitate and normalise the relationship between the parties.

Accordingly, upholding the impugned judgment of conviction

passed by the trial Court and affirmed by the appellate Court, the present revision petition is disposed of with a modification in the impugned order of sentence to the effect that the sentence awarded to the petitioners is reduced to the period already undergone by them. Petitioners Dharamvir alias Babbu and Ravi Kumar shall be set free forthwith if not otherwise required in any other case.

October 13, 2015

Yag Dutt

(HARI PAL VERMA)
JUDGE