

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

CRM-M-18132 of 2015
Date of Decision: March 16, 2016

Tarlochan Singh ...Petitioner

Versus

Balwinder Kaur @ Parminder Kaur ...Respondent

CRM-M-39205 of 2015

Rajinder Kumar ...Petitioner

Versus

Balwinder Kaur @ Parminder Kaur ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Shukla, Advocate
for the petitioner in both the petitions.

Mr. Gopal Sharma, Advocate
for the respondent in both the petitions.

FATEH DEEP SINGH, J.

These two petitions i.e. CRM-M-18132 of 2015 (hereinafter referred as first petition) and CRM-M-39205 of 2015 (hereinafter referred as second petition) are preferred under Section 482 Cr.P.C. The first petition is for quashing of order dated 17.5.2014 (Annexure P/2) and subsequent proceedings by petitioner/accused Tarlochan Singh, SSA and the second petition is for quashing the same

very order under the same very provisions by the petitioner/accused-Rajinder Kumar, J.E. on the basis of compromise (Annexure P/3). Since both the petitions pertains to the same complaint (Annexure P/1) therefore, are being disposed off by this common order on account of consanguinity of the facts and having common question of law.

Heard.

The factual allegations levelled by the complainant Balwinder Kaur @ Parminder Kaur wife of deceased Balwinder Singh, Assistant Lineman in her complaint are to the effect that her husband was working as Assistant Lineman in Punjab State Electricity Board (for short, 'PSEB') and at the relevant time was posted in sub-station Sarai Banjara under the accused-petitioners Tarlochan Singh and Rajinder Kumar.

It is alleged that on 6.9.2007 her husband was called to the sub-station by the accused in the afternoon and was assigned the duty to repair the main line of village Mianpur Mulluana, Tehsil and District Fatehgarh Sahib. It is contended that before leaving to the assigned place her husband ensured that the supply to the main line of that point was switched off till reporting back by him. It is alleged that accused Rajinder Kumar, J.E. has also told her husband that necessary permission for repair work has also been obtained by him and that when her husband along with his colleague Kashmira Singh were in the process of repair of main line, both the accused had switched on the power supply of the said line and, thus, on account of this intentional work her husband was electrocuted resulting in his instant death. After recording preliminary evidence the Court of learned Additional Chief Judicial Magistrate, Fatehgarh Sahib summoned the accused vide orders dated 17.5.2014 under Section 304-II IPC. It is thereupon, in the second petition the parties had effected a compromise Annexure P/3 on

the basis of which statements of the accused Rajinder Kumar and Tarlochan Singh as well as of complainant Balwinder Kaur @ Parminder Kaur were recorded on the directions of this Court vide orders dated 20.11.2015 wherein, the compromise Annexure C/1 was also placed on records, whereby parties have shown concurrence to this compromise.

Heard, learned counsel for the petitioners has placed reliance on **2003 Criminal L.J. 2028 (SC) B.S. Joshi and others vs. State of Haryana and another** to impress upon the Court and to hammer home the point that for securing the ends of justice the bar of Section 320 Cr.P.C. does not come in the way of this Court to exercise its powers that too in a criminal complaint. It needs to be reiterated here that exercise of powers under Section 482 Cr.P.C. though cannot be put in a strait jacket formula and there are unbridled powers of this Court to exercise its inherent powers to meet the ends of justice and which powers are certainly limitless and at the same time it becomes necessary to use the same with utmost care and caution while invoking these provisions under Section 482 Cr.P.C. The Hon'ble Apex Court in the case of **B.S. Joshi** ibid though has not laid down a rider and categorisation of the matters in which such a compromise is to be allowed but as a mark of caution certainly held that in cases pertaining to heinous offences Court must ensure that exercise of powers under Section 482 Cr.P.C. are not so unrestrictedly used and there should be due care and caution considering the nature of the offence and even it is laid down that Section 320 Cr.P.C. does not restrict powers under Section 482 Cr.P.C. for quashing on the basis of compromise but it is only where this Court comes to the conclusion that the ends of justice so required. In the light of the allegations of the complainant, who herself and her witnesses already testified on oath before the Court below against the accused and, thus, effecting the compromise

Annexure P/3 subsequent to the summoning order passed by the Court that too in a heinous offence under Section 304-II. It would be too preposterous to accept the contentions of the learned counsel for the petitioners that there is no reasonable likelihood of the accused being convicted for the offence. It is the case where the complainant and her witnesses have testified on oath and, therefore, it would be difficult for this Court to accept the veracity of the contentions made by way of compromise Annexure P/3, thus, this Court cannot accept the contentions of the learned counsel for the petitioner and the relief being sought in the petition cannot be granted. This Court in a larger Bench view in the case of **Kulwinder Singh and others vs. State of Punjab and another 2007(3) RCR (Criminal) 1052** has considered the ambit of Section 320 Cr.P.C. for enabling compounding of offences which are non-compoundable and after considering the catena of case law and discordant notes surrounded by various ratios as a mark of caution that the High Court has to be reluctant to invoke its inherent jurisdiction under Section 482 Cr.P.C. for granting relief in favour of the parties where there exists statutory bar either in the Code or any other law which would disentitle the parties to the relief sought for by them and at the same time note was taken of the ratio laid down in **B.S. Joshi and others vs. State of Haryana and others 2003(2) RCR (Criminal) 888 SC** to bring forth the view that an FIR can be quashed where an offence was not compoundable in cases where the parties have arrived at the compromise or settled their disputes and, thereafter, reliance was placed on **State of Haryana and others vs. Ch. Bhajan Lal and others 1992 AIR (SC) 604** to lay that though not exhaustive but illustrative list of cases where such a power under Section 482 Cr.P.C. can be exercised and following the guidelines laid down in **Dharambir vs. State of Haryana 2005(3) RCR (Crl.) 426** has laid

down the proposition that offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted and since even in a subsequent view in **Narinder Singh and others vs State of Punjab and another 2014(2) RCR (Criminal) 482** the Hon'ble Apex Court has stressed that to some extent liberalness needs to be shown, especially, where the chances of conviction are remote even in cases of serious offences. However, as has been laid down in Bhajan Lal's case supra this Court needs to exercise its powers sparingly, thus, the second petition CRM-M-39205 of 2015 being hopelessly without any merit stands dismissed.

In the first petition also for quashment on merits the precise grounds that have been canvassed by the counsel for the petitioner are that the learned Court below has issued summoning order in a routine manner without due application of judicious mind and has sought to align fears that in her representation Annexure P/4 earlier sent on 11.9.2007 to Senior Superintendent of Police, Fatehgarh Sahib complainant does not in any manner level allegations against Tarlochan Singh. In this petition it is contended on behalf of the petitioner that there was no such information or knowledge brought to him regarding repair works and, thus, he cannot be burdened with any such liability. Though, counsel for the respondent has remained a stoic spectator in these submissions apparently on account of a compromise since all these averments and grounds so detailed before this Court in this petition are more based on defence of the petitioner-accused more based on appreciation of evidence which can be raked up at the appropriate stage of the trial and being as such cannot be decided on the touchstone of exercise of powers under Section 482 Cr.P.C. In **Bhajan Lal's** case ibid the Hon'ble Apex Court had laid down the proposition that exercise

of powers by the High Court under Section 482 Cr.P.C. are to be sparingly used primarily with an aim and object to advance the cause of justice and enumerates situations where such inherent powers can be exercised which are as follows:-

1. Where the allegations made in the First Information Report or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and made out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Thus, to the mind of this Court, apparently none of these conditions sufficiently stand fulfilled to enable the Court to come to the aid of the petitioner-accused. Looking out from another angle by now it is well position of law as has been laid down in **Urmila Devi vs, Yudhvair Singh 2013(13) SCALE 513** wherein, Hon'ble Apex Court has laid down the proposition that against a summoning order in a criminal case a revision lies as the same cannot be termed to be an interlocutory order and falls within the definition of 'intermediatory orders' and, thus, invoking the jurisdiction under Section 482 Cr.P.C. is highly uncalled for. More so, in view of the proposition of law laid down in **Mohit @ Sonu and another vs. State of U.P. and another 2013(3) RCR Criminal 673** which provides that when there is a specific statutory remedy provided by way of appeal or revision, inherent powers under Section 482 Cr.P.C. should not be exercised and the same ought to be discouraged from resorting to it and, thus, even by that analogy the first petition CRM-M-18132 of 2015 is without any merit and, therefore, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 16, 2016
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