

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M No.2380 of 2015

Date of Decision:- 2nd March, 2016

Jasbir Singh.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Liaqat Ali, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab
for respondent no.1-State.

JASWANT SINGH, J.

Prayer is under Section 482 Cr.PC for quashing of case FIR No.25 dated 25.02.2014 for offences punishable under Sections 279 and 304-A of Indian Penal Code registered with Police Station Dehlon, District Ludhiana City and all other subsequent proceedings arising therefrom on the basis of compromise dated 22.12.2014 (**P-2**) and the affidavits dated 22.12.2014 (**P-3** and **P-4**).

In brief, facts of the case are that FIR was got registered against accused-petitioner Jasbir Singh under Sections 279 and 304-A of Indian Penal Code at Police Station Dehlon, District Ludhiana City wherein the allegations were that the petitioner while driving his Truck in a rash and negligent manner had caused the accident of Kewal Singh, who was later

on shifted to hospital where he died. Due to rash and negligent driving of Jasbir Singh-accused, Kewal Singh died and therefore on the statement made by respondent no.2-Harbhajan son of Gurmail Singh the above mentioned FIR against the petitioner was registered on 25.02.2014 (P-1).

As per the averments in the petition, subsequently a compromise dated 22.12.2014 (P-2) i.e. after nearly 10 months of the said incident has been arrived at between the complainant-respondent no 2-Harbhajan Singh and respondent no.3 namely Sukhvir Kaur widow of deceased Kewal Singh on one side and petitioner-accused, namely, Jasbir Singh on the other side. The petitioner has placed on record affidavits given by the complainant as well as the affected party i.e. the widow of the deceased as Annexure P-3 & P-4 respectively. Thus, on the strength of the above mentioned facts prayer has been made for quashing of the FIR and reliance has been placed upon the judgments **Ashok Kumar Vs. State & Anr. 2014(9) RCR(Criminal) 1690(Delhi)**, **Puttaswamy Vs. State of Karnataka & Anr. 2009(1) RCR (Criminal) 501 (S.C)** and **State of M.P. Vs. Mehtaab 2015(1) RCR (Criminal) 1008 (S.C).**

On the other hand, learned State Counsel has argued that since the offence was committed under Section 279 and 304-A of Indian Penal Code, which is a non compoundable offence and due to a disturbing trend of frequent accidents taking place due to rash and negligent driving, in which numerous innocent people have died a strict view should be taken and such kind of FIRs need not be quashed on the basis of compromise because offence committed is against the State and not against an individual who in any case has died. In support of his contentions, State counsel has relied upon **Varinder Kumar Vs. State of Punjab & Anr. 2012(4) AICLR 104,**

**Baldev Singh Vs. State of Punjab & Ors. CRM-M No.13647 of 2014
Decided on 11.09.2015 (P&H), Satish Kumar Vs. State of Punjab &
Ors. 2014(4) RCR (Criminal) 453, Inderpal Singh Vs. State of Punjab &
Anr. CRM-M No.16636 of 2010 Decided on 28.07.2010 & Dalbir Singh
Vs. State of Haryana 2005(5) SCC 82.**

Before coming to the merits of the case, it is apposite that the numerous judgments that have been cited at bar by both the sides are dealt with.

The judgment relied upon by the learned Counsel for the petitioner i.e. Ashok Kumar's case (supra) was a case whereby the learned Single Judge of Delhi High Court had quashed the FIR on the basis of compromise by holding that if the Court is satisfied on the face of such settlement that there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings justice shall be casualty and ends of justice shall be defeated, in those situations the FIR should be quashed.

The second judgment relied upon by the learned Counsel for the petitioner i.e. Puttaswamy's case (supra) is a case whereby the Hon'ble Supreme Court had reduced the sentence to already undergone in view of the fact that after the accused was convicted under Section 304-A of Indian Penal Code and had suffered incarceration for certain point of time the Court opined that instead of confining the appellant in prison, justice would be served if accused is made to compensate the family of the deceased on account of the loss suffered by them. However, in para no.5 of the judgment, the Hon'ble Supreme Court had exercised its powers vested in it under Article 142 of the Constitution which this Court is not vested with.

The last judgment relied upon by learned Counsel for the petitioner is State of M.P. Vs. Mehtaab's case (supra) which was a case whereby the High Court had reduced the sentence of the accused as already undergone and against the said judgment State had filed an appeal before the Hon'ble Supreme Court, who observed that the High Court was not justified in reducing the sentence of imprisonment to 10 days without awarding any compensation to the heirs of the deceased. This order was passed keeping in view the fact that the accused had already been released after undergoing the reduced sentence and also keeping in view the fact as observed in para no.7 of the judgment by their lordships that State had put up an alternative plea that reasonable compensation should have been granted to the family of the deceased as a condition for reduction of sentence.

As far as the judgments relied upon by the learned State Counsel are concerned, he has firstly relied upon Varinder Kumar's case (supra) whereby the Single Bench of this Court had come down heavily upon compromise petitions pertaining to the offences committed under Section 279 and 304-A of Indian Penal Code by observing as under:-

“ 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 the 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. ”

The second judgment relied upon by learned State Counsel i.e. Baldev Singh's case (supra) would also show that the Coordinate Single Bench of this Court had also relied upon Varinder Kumar's case to dismiss the petition filed on the basis of compromise for similar offences as in the present one.

Third judgment of Satish Kumar's case (supra) is also passed by Coordinate Bench of this Court wherein similar view was taken by the Court while declining the relief of quashing of FIR on the basis of compromise.

Fourth judgment relied upon by the State has been passed by this Court whereby an opinion was taken that an FIR cannot be quashed of a non compoundable offence.

The last judgment relied upon by the State is of Dalbir Singh's case (supra) wherein it was held by the Hon'ble Supreme Court that due to galloping trends of roadside accidents and their devastating consequences visiting the victims and their families, the FIR on the basis of compromise should not be quashed.

Having reproduced the numerous judgments relied upon by both the parties, this Court would not try to answer the tricky question that whether an FIR registered Under Sections 279 and 304-A of IPC should be quashed on the basis of compromise or not?. The question, it seems, has been answered to some extent by Hon'ble Supreme Court in **Gurpreet**

Singh Vs. State of Punjab & Anr. 2011(2) AICLR 302 in its very brief order, had observed in para no.5 to 7 as under:-

“5. The said compromise has been arrived at between the parties without any pressure. The complainant as well as the legal heirs of the deceased have no objection if the said FIR is quashed.

6. Taking into account the allegations, compromise dated 03.11.2010 as well as affidavits of the complainant and legal heirs, there is no impediment in the way of this Court to quash the present FIR and subsequent proceedings arising out of the same in view of the above said settled proposition of law.

7. Accordingly, the present petition is allowed and FIR No.125 dated 29.07.2009 under Section 279 and 304-A of Indian Penal Code Police Station Garhshankar, District Hoshiarpur (Annexure P-1) and subsequent proceedings arising out the same are hereby quashed. ”

Further, the Hon'ble Supreme Court in **Gian Singh Vs. State of Punjab & Anr. 2012(4) RCR Criminal 543** has held that FIR can be quashed on the basis of compromise only in order to secure the ends of justice and to prevent the abuse of process of any Court and not otherwise, in exercise of powers under Section 482 Cr.PC by the High Court. At the same time it was also held that while exercising such powers the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or any offence like death, murder, rape, dacoity etc., cannot and should not be quashed even if the victim or victim's family have settled the disputes. Such offences are not private in nature but have serious impact on the society. Similar view has been reiterated by the Hon'ble Supreme Court in **Narinder Singh & Ors. Vs. State of Punjab & Anr. 2014(2) RCR Criminal 482.**

Therefore, this Court is of the opinion that there is no bar in quashing of FIR registered under Section 279 and 304-A IPC on the basis of a compromise, however, the Court is required to see the nature and manner in which the alleged accident had taken place and for coming to said conclusion, records can also be called for from the concerned investigating officer and satisfy itself as to whether 'prima-facie' the accident caused was due to gross negligence on part of the accused or due to certain unavoidable circumstances which lead to unfortunate death(s). This view is being taken by this Court despite the fact that the Hon'ble Supreme Court has stated in no un-categoric words in **B Nagabhushanam Vs. State of Karnataka 2008 (5) SCC 730** and **Dalbir Singh's case (supra)**, that no leniency should be shown to the rash and negligent drivers causing death. The reasons for taking such a view is that the provisions of Section 304-A IPC are obviously attracted only if the person did not intend to kill anyone but due to his negligence or rashness person died in a road accident. Thus, the Hon'ble Supreme Court, in my opinion would have never ever meant to give a literal meaning to words '*no leniency*' to the negligent drivers because ultimately, the Hon'ble Supreme Court has also compounded offences under Section 304-A IPC by taking into consideration the facts and circumstances of the case in the judgments cited by the counsel for petitioner.

Thus, considering all the judgments cited at the Bar as well as keeping in view the principles of natural justice and equity, this Court while exercising powers under Section 482 Cr.PC can quash the FIR but with a rider that the court is required to see as what were the circumstances that led to the accident and form a prima-facie opinion after going through the same.

This opinion, can be formed by reading the FIR and if need be, going

through the police file. The post accident conduct of the accused would also be a relevant consideration in forming such opinion.

Above being the legal position and the material on record, now the short and significant question for adjudication of the present case is as to whether the impugned FIR in the present case under Section 279 and 304-A IPC is liable to be quashed on the basis of compromise or not. For the determination of the case it would be apposite to reproduce the relevant portion of the FIR:-

“ At about 9.30 pm from the side of Sahnewal, one truck with great speed came and hit the car of Kewal Singh, due to which the car of Kewal Singh had got totally damaged from the front side and Kewal Singh received multiple injuries. The truck struck the car in such a speed that the front portion of the car got turned toward back i.e. from the side of Sahnewal to that of Dehlon, lot of people had got collected at the spot and then Kewal Singh was taken to D.M.C. Hospital in Ambulance, where Kewal Singh had died and truck driver had run away from the spot. ”

As is evident from the record that direct and serious allegations are assigned that the accident in question had taken place due to rash and negligent driving of the petitioner while driving the offending vehicle, in which Kewal Singh's car from the front side was completely damaged and deceased Kewal Singh had received multiple injuries. The impact was so huge that the car had turned 180 degrees towards the opposite side. Not only this, the truck driver had ran away from the spot. Undisputedly, the complainant-respondent no.2 is not the legal heir of the deceased and thus, at this stage, he cannot be attributed any kind of malafides against the petitioner. Since, the allegations are direct and the accident seems to be the

result of rash and negligent driving of the petitioner, who was driving the truck, this Court is of the opinion that the compromise at this stage cannot be permitted because it would be a matter of evidence as to whether the petitioner was driving the truck in the same negligent manner as has been projected in the FIR. While dismissing this petition, this Court has also taken into consideration the disturbing trend of the drivers of offending vehicle running away from the spot, leaving the poor victim to die a painful untimely death. Thus, no sympathy can be shown to such drivers at this stage.

In view of the above, finding the instant petition lack of merits, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

March 2nd, 2016
Vinay