

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.1384 of 2014 (O&M)

Date of Decision: 19.01.2016

Balwinder Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

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

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

Present:- Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J, (Oral)

Petitioner-Balwinder Singh has filed the present revision petition against judgment dated 11.10.2013 passed by the trial Court, whereby he has been convicted for offence under Section 304-A IPC and sentenced to undergo rigorous imprisonment for two years along with fine of Rs.4,000/- and in default of payment of fine, he has been ordered to further undergo simple imprisonment for 30 days. Challenge has also

been laid to judgment dated 16.4.2014 passed by learned Additional Sessions Judge, Fazilka, whereby appeal against the judgment of conviction and sentence dated 11.10.2013 passed by the trial Court has been dismissed and the sentence imposed upon the petitioner has been upheld.

On August 05, 2014, the petitioner had shown his keenness to have some settlement with the family of the deceased persons, for which, he was granted interim bail, enabling him to settle the matter with the complainant by paying more compensation and thereby strengthening his case for some relief *qua* the sentence.

While this revision petition was pending, the petitioner moved an application i.e. CRM-31590-2014 for placing on record compromise dated 9.10.2014 executed between the petitioner and the family members of the deceased Bittu. As per the compromise deed, the matter was settled between the parties. The second party i.e. the complainant's side had received the compensation in a case filed by them under the Motor Vehicles Act, 1988 and had no objection to the revision petition filed by the petitioner being allowed. However, the parties had no knowledge about the whereabouts of another deceased namely Rajesh Kumar son of Balak Ram, who was from Uttar Pradesh, though efforts were being made by the petitioner to trace his family.

Taking into consideration the aforesaid compromise entered into the parties, this Court vide order dated 13.11.2014, directed the parties to get their statements recorded before the Illaqa Magistrate on 20.11.2014 and the Illaqa Magistrate was directed to forward its report regarding the compromise so effected between the parties.

Pursuant to aforesaid order dated 13.11.2014, the parents of the deceased Bittu namely Satnam Singh and Ranjit Kaur appeared before Judicial Magistrate Ist Class, Fazilka and got their statements recorded. In their joint statement, they submitted that they have effected the compromise with the accused Balwinder Singh with their own free will, voluntarily and without any pressure or coercion and their compromise be accepted. On the basis of the statements so recorded, learned Magistrate forwarded her report dated 26.11.2014 and had shown her satisfaction to the compromise effected between the parties and reported that the compromise is voluntary, without any duress, coercion or threat of any kind, rather the same has been effected in order to keep peace and harmony and to restore cordial relations between the parties.

In the interregnum, the Investigating Officer traced out Balak Ram, the father of another deceased namely Rajesh Kumar, who was produced before this Court on 22.12.2014. Due to this development, learned counsel for the petitioner sought time to enable the petitioner to work out a compromise with him also.

Accordingly, vide order dated 22.12.2014 of this Court, the parties were directed to get their statements recorded before Illaqa Magistrate in case compromise is worked out between the parties and the Illaqa Magistrate was directed to submit its report that the statements so recorded are genuine, without pressure or coercion.

Pursuant to aforesaid order dated 22.12.2014, the parents of the deceased - Rajesh Kumar namely Balak Ram and Inder Kunwar appeared before Chief Judicial Magistrate, Fazilka and got their joint statement recorded, which reads as under:-

“Stated that the present FIR No.90 dated 22.5.2008 u/s 279/427/304-A of IPC of PS Khui Khera was registered on the statement of Balwinder Singh son of Dalip Singh (complainant) against accused Balwinder Singh aged 45 years s/o Amrik Singh s/o Tara Singh r/o Village Sudh Singh Wala, PS Mallan Wala, Tehsil and District Ferozepur. We have compromised with the accused/petitioner namely Balwinder Singh aged 45 years s/o Amrik Singh s/o Tara Singh r/o Village Sudh Singh Wala, PS Mallan Wala, Tehsil and District Ferozepur without any influence, coercion, pressure at our own due to intervention of the respectables, relatives and fellow friends. We have no further grudge remained against the accused/petitioner. We want to live our lives peacefully without any grievances against each other and have already settled all our matters in between us, so we do not want to pursue against the accused/petitioner further more. The accused/petitioner has already filed the Revision proceedings before the Hon’ble Punjab and Haryana High Court, Chandigarh

vide CRR-1384 of 2014 (O&M). We have no objection if the proceedings of present case against the accused/petitioner be quashed and he be discharged from the present case also.

RO & AC

Sd/-

*LTI (Balak Ram)
RTI (Inder Kunwar)*

*(Kulbhushan Kumar)
Chief Judicial Magistrate
Fazilka/07.08.2015"*

On the basis of the statement so recorded, learned Chief Judicial Magistrate, Fazilka has forwarded his report dated 10.8.2015 to the effect that the parents of deceased Rajesh Kumar have also compromised the matter with the petitioner-accused and they have no objection if the proceedings of the present FIR are quashed against the accused.

Learned counsel appearing for the petitioner submits that he is not pressing this revision petition on merit and is not challenging the conviction on merit, however, he prays that sentence of the petitioner be reduced to the period already undergone by him, as this criminal trial is hanging on his head for the last more than seven years and it should be a sufficient mitigating circumstance to treat him leniently, particularly when he has effected compromise with the legal heirs of both the deceased persons and has suitably compensated them.

However, learned counsel for the State has vehemently opposed the reduction in sentence and submitted that though the matter has been compromised between the parties, but the accident caused by the petitioner has resulted

into death of two persons and therefore, the petitioner does not deserve any leniency.

I have heard learned counsel for the parties and perused the impugned judgments.

Reference may be made to judgment of Hon'ble the Apex Court in the case of **Ismail Versus Police Sub Inspector, Hospet, 2013(1) RCR (Criminal) 826 (SC)**, wherein the accused was convicted under Section 304-A IPC and was sentenced to undergo rigorous imprisonment for one year, however, Hon'ble the Apex Court reduced his sentence to the period of 15 days which he had already undergone.

Similarly, in **Puttaswamy Versus State of Karnataka and another 2009(1) RCR (Criminal) 501 (SC)**, Hon'ble the Apex Court has observed in para Nos.9 and 10 as under:

“9. What emerges from all these decisions is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure, the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction. In the present case, the appellant has been convicted under Sections 279 and 304-A of the Indian Penal Code and has been sentenced to undergo simple imprisonment for a period of 6 months and to pay a fine of Rs.2,000/-. The sentence as far as conviction under Section 279 I.P.C. is concerned has been set aside by the High Court. What remains after the judgment of the High Court is the conviction under Sections 279 and 304-A I.P.C. wherein the appellant was

sentenced to undergo six months simple imprisonment along with a fine of Rs.2,000/-. In our view, this is one of those cases where instead of confining the appellant in prison, the interest of justice will be better served if he is made to compensate the family of the deceased on account of the loss suffered by them.

10. Accordingly, while maintaining the appellant's conviction under Sections 279 and 304-A I.P.C., notwithstanding the agreement arrived at between the parties, we increase the amount of fine from Rs.2,000/- to Rs.20,000/- to be paid by the appellant to the parents of the deceased and reduce the sentence to the period already undergone, subject to payment of the fine. The aforesaid amount is to be deposited by the appellant in the Trial Court within three weeks from date, and on such deposit, the said amount shall be made over to the parents of the deceased and the appellant shall be released forthwith. In default of such deposit, this order shall remain in abeyance for a period of four weeks and if still no deposit is made within the said period the appeal will stand dismissed."

In the case of **Sube Singh and another v. State of Haryana 2013(4) RCR (Criminal) 102**, a Division Bench of this Court has held that when the offences are private in nature and not against the whole society, the High Court is empowered to compound offences under Section 482 CrPC. The offences can be compounded even at appellate stage. In the said case, the Additional Chief Judicial Magistrate had convicted the accused-therein under Sections 420, 467, 468 read with Section 120-B IPC

and while the appeal against the said judgment was pending before Sessions Court, the parties entered into a compromise. This Court held that the High Court is vested with unparalleled power to quash criminal proceedings at any stage to secure ends of justice. 'Any stage' include the stage during which appeal is pending before the Appellate Court.

In **Sube Singh and another v. State of Haryana** (supra), while dealing with question no.2 regarding the scope of Section 482 CrPC, this Court has held 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 CrPC 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. vs. State of Madhya Pradesh & Anr., (2008) 5 SCC 794**, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498-A IPC 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 CrPC 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 CrPC 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) Since the petitioners have relied upon the compromise deed dated 08.08.2011, we thought it appropriate to ascertain firstly the genuineness of the settlement and consequently passed the following order on 08.08.2012:-

“Before we delve upon the issued involved, especially in the light of the reference order dated 16.12.2011, it appears expedient that the genuineness and validity of the compromise dated 08.08.2011 (Annexure P-2) must be established. Consequently, we direct the learned Additional Sessions Judge, Fast Track Court, Hisar to enable the petitioner; witnesses of the compromise deed and the complainant-mother to appear and depose in support of the compromise deed. The

Additional Sessions Judge shall thereafter send a report to this Court which shall enlighten the living conditions of the complainant and the manner in which she is being looked after by her family members. The report shall be sent as early as possible but before the next date of hearing.”

(19) In compliance thereto, the parties appeared before the learned Additional Sessions Judge at Hisar who, after examining the relevant record and the witnesses, has sent the following report dated 06.09.2012 to this Court:-

“Smt. Reshma Devi widow of Rajmal, resident of Jhanjanwala, District Jind deposed before this Court that she had filed a complaint against Rameshwar, Sube Singh and others about cheating committed with her regarding her land. In said criminal complaint, Sube Singh etc. were convicted and they had filed an appeal in the Court. She further deposed that on 08.08.2011 with the intervention of members of Panchayat, a compromise had entered between her, Sube Singh and Rameshwar, which was reduced into writing which is marked as X-1. She stated that she has heard the contents of compromise dated 8.8.2011 mark X-1 it is the same compromise, which was got affected by Panchayat between her and her two sons Sube Singh and Rameshwar and in presence of daughter Kamlesh, Ved Parkash her son-in-law, Kuldeep Sarpanch, village Jhanjanwala, Sunita, the member Panchayat Jhanjanwala and all the parties to the compromise had put their respective thumb impressions and

signatures after understanding. She also deposed that as per the compromise she has agreed that she had no objection, if the case/appeal preferred by Sube Singh and Rameshwar is put to an end and the same is set aside and they are acquitted. She also testified that she had agreed to give statement or execute affidavit in favour of Sube Singh and Rameshwar in the Court and would also cooperate with Sube Singh and others in putting an end to the dispute with them and settled all the matters in said respect. She also stated that she is residing together with her sons Sube and Rameshwar under the same roof and she stated that her sons Sube Singh and Rameshwar are keeping her well and looking after her. She also testified that she has made the statement in the court voluntarily and with full understanding. Smt. Kamlesh wife of Ved Parkash (daughter of Reshma) and Ved Parkash son of Har Narain, (son in law of Smt. Reshma), Kuldeep Sarpanch, village Jhanjanwala, Sunita, Member Panchayat village Jhanjanwala District Jind in their separate statements deposed that regarding the criminal complaint instituted by Smt. Reshma Devi which led to the conviction of Sube Singh and Rameshwar and their filing appeal in the court, a compromise dated 8.8.2011 mark X-1 was reduced into writing and as per the compromise the parties to the same had agreed that Smt. Reshma Devi would have no objection, if the conviction of Sube Singh and Rameshwar is set aside and they are acquitted and it was also agreed that Reshma would give the statement in

the court in said regard. They also deposed that Sube Singh and Rameshwar are keeping Smt. Resham well and are serving her. They accepted the compromise mark X-1 as correct as entered into between the parties. Rameshwar and Sube Singh, the appellants also suffered a separate statement that a compromise dated 8.8.2011 mark X-1 has been entered between the parties with the assistance of Panchayat members and their sister and brother-in-law. They stated that their mother Smt. Reshma is living with them and they are serving her. Shri Pawan Kumar, Advocate identified Smt. Reshma, Kamlesh wife of Ved Parkash, Ved Parkash son of Har Narain, Kuldeep, Sarpanch village Jhanjanwala and Sunita, Member Panchayat village Jhanjanwala and Shri MR Mehta, Advocate identified the appellants Sube Singh and Rameshwar. From the statements of the parties discussed above and compromise dated 08.08.2011 mark X-1, it is made out that the parties have arrived at aforesaid compromise willingly. The compromise dated 8.8.2011 mark X-1 appears genuine and valid document executed by the parties as per their statements recorded above.”

(20) It has thus been ascertained to our satisfaction and stands established that the compromise arrived at between the parties is genuine, willful and bona fide. It is also proved that the petitioners and respondent No.2 are living under the same roof. In fact to remove any sort of doubts regarding the genuineness of the compromise, respondent No.2 appeared before us along with her daughter and made a statement on oath on 03.04.2013 in support of the compromise. She also

stated that the parties are living under the one roof and she is being well looked after by her sons, namely, the petitioners.”

In similar circumstances, this Court in the case of **Karamjit Singh v. State (Union Territory of Chandigarh) and others** CRR No.406 of 2006 decided on 9.12.2015, while maintaining the conviction of the accused for offence under Section 304-A IPC, has reduced the sentence of the accused to the period of sentence already undergone by him.

In view of the judgments in the cases of **Puttaswamy Versus State of Karnataka and another** (*supra*), **Ismail Versus Police Sub Inspector, Hospet** (*supra*), **Sube Singh and another v. State of Haryana** (*supra*) and **Karamjit Singh v. State (Union Territory of Chandigarh) and others** (*supra*) and taking into account the prayer made by learned counsel for the petitioner, this Court is of the view that no useful purpose will be served by keeping the petitioner behind bars, as the petitioner has already faced ordeal of criminal trial for about eight years and he has compensated the legal heirs of deceased as well. Therefore, this Court feels that ends of justice will be met if the substantive sentence of the petitioner is reduced to the period already undergone by him.

Accordingly, while upholding the conviction of the petitioner, the sentence awarded to him is reduced to the period already undergone by him.

With above modification in the substantive sentence of
the petitioner, the revision petition stands dismissed.

January 19, 2016
AK

(HARI PAL VERMA)
JUDGE