

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-21503 of 2017 in/and
CRA-S-3965-SB of 2015(O&M)
Date of Decision: 08.11.2017

Harwinder Singh and others

..... Appellants

Versus

State of Punjab and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Deepak Bhardwaj, Advocate
for the appellant.

Mr. Rahul Rathore, DAG, Punjab.

Mr. Saroj Makkar, Advocate
for respondent no.2.

LISA GILL, J (Oral).

Appellants have been convicted for the offence punishable under Section 498-A of the Indian Penal Code, 1860 (for short-'IPC') by the learned Additional Sessions Judge, SBS, Nagar, vide impugned judgment dated 28.08.2015 and by a separate order of the even dated, they have been sentenced as under:-

Name of appellant	Under Section	Sentence
Harwinder Singh	498-A IPC	Rigorous imprisonment for three years; besides pay a fine of ₹10,000/- and in default thereof to further undergo RI for two months
Gian Singh	498-A IPC	Rigorous imprisonment for three years; besides pay a fine of ₹10,000/- and in default thereof to further undergo RI for two months

It is pertinent to mention that appellants no. 3 to 5 were ordered to be released on probation by the learned Additional Sessions Judge, SBS

Nagar, on furnishing probation bonds in the sum of ₹ 50,000/- with one surety in the like amount each, undertaking to hear and receive the sentence whenever called upon within a period of six months and in the meanwhile, to keep peace and be of good behaviour.

Aggrieved therefrom, the present appeal has been filed.

FIR No. 240 dated 03.11.2005, under Section 323, 149, 406, 498-A, 315 read with 120-B IPC was registered against the appellants on a written complaint of Makhan Singh, wherein allegations attracting the offences punishable under Sections 323, 149, 406, 498-A, 315 read with 120-B IPC were raised against the appellants.

The dispute in question arose because of matrimonial discord between the complainant's daughter and appellant no.1-Harwinder Singh. During the pendency of this appeal, the matter was amicably resolved between the parties on 18.03.2017. As per the said compromise, appellant no.1 and his wife decided to part ways. Petition under Section 13-B of the Hindu Marriage Act, 1955, was filed. Settled amount of alimony was handed over to the wife of appellant no.1. It was further agreed that the parties would give a quietus to all disputes between them and the complainant and his daughter have no objection to the acquittal of the appellants in terms of the compromise dated 18.03.2017 (Annexure A-1) arrived at between the parties. Therefore, it is prayed that the present appeal be allowed/disposed of in terms of the compromise arrived at between the parties.

CRM-21503 of 2017 has been filed for disposal of the main appeal in terms of compromise dated 18.03.2017 (Annexure A-1) arrived at between the parties after listing the same for hearing.

Learned counsel for the appellants submits that as the dispute arose out of matrimonial discord between petitioner No.1 and complainant-

Jaswinder Kaur, conviction of the appellants under Section 498-A IPC is not an impediment to the quashing of the abovementioned FIR. He relies on a Division Bench judgment of this Court in **Sube Singh and another v. State of Haryana and another, 2013(4) RCR(Criminal) 102.**

This Court on 14.09.2017 directed the parties to appear before the learned Illaqa Magistrate for recording of their statements in respect to the above-mentioned compromise. Learned Illaqa Magistrate was directed to submit a report regarding the genuineness of the compromise, as to whether it has been arrived at out of the free will and volition of the parties without any coercion, fear or undue influence. Learned Illaqa Magistrate was also directed to intimate whether the applicant-appellants are absconding/proclaimed offenders and whether any other case is pending against them. Information was sought as to whether all affected persons are a party to the settlement.

Pursuant to order dated 14.09.2017, parties appeared before the learned Sub-Divisional Judicial Magistrate, Balachaur and their statements were recorded on 27.09.2017. Report dated 13.10.2017 from Sub-Divisional Judicial Magistrate, Balachaur, has been received. Respondent No.2 stated that the matter has been amicably resolved by her with all the accused-appellants with the intervention of respectables of locality and family members. Settlement, it is submitted has been arrived at, out of her own free will, without any pressure, threat or inducement. It is stated by respondent no.2 that she has no objection to the quashing of the abovesaid FIR against all the accused-appellants/ their acquittal, subject to strict adherence to the terms and conditions of the settlement by the appellants. Statements of the complainant (father of respondent no.2) as well as appellants in respect to the compromise were recorded as well.

As per report dated 13.10.2017, received from the learned Sub-Divisional Judicial Magistrate, Balachaur, it is opined that the compromise/settlement between the parties is genuine, arrived at out of their free consent, without any threat, pressure or undue influence. Appellants are not reported to be proclaimed offenders/persons.

Learned counsel for respondent No.2 reaffirms and verifies the factum of settlement between the parties. It is submitted that respondent no.2 has no objection to the quashing of the above-mentioned FIR against all the appellants including judgment and order dated 28.08.2015 passed by the learned Additional Sessions Judge, SBS Nagar.

Learned counsel for the State has not raised any serious objection to the quashing of this FIR on the basis of a settlement arrived at between the parties.

In ***Kulwinder Singh and others versus State of Punjab and another*** 2007 (3) R.C.R. (Criminal) 1052, a five member Bench of this Court has observed as under:-

“The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Criminal Procedure Code is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is “finest hour of justice”.

The Hon'ble Supreme Court in ***B.S.Joshi and others v. State of Haryana, 2003(4) SCC 675*** has observed that it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

A Division Bench of this Court in Sube Singh's case (supra) has held as under:-

“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 is fully justified on facts and circumstances of the case.”

It is held in the abovesaid case that there is no embargo against invoking the power under Section 482 Cr.P.C. after the conviction of an accused by the trial court and during the pendency of appeal against such conviction.

In the instant case, FIR No.240 dated 03.11.2005, is a fallout of a matrimonial dispute between the parties. The matter has been amicably resolved between the parties who wish to give a quietus to the entire issue and carry on with their respective lives. Report dated 13.10.2017 submitted by the learned Sub-Divisional Judicial Magistrate, Balachaur, establishes that the compromise between the parties is genuine, arrived at out of their own free will. Therefore, non-acceptance of this compromise would lead to denial of complete justice to parties.

Keeping in view the facts and circumstances of this case, conviction and sentence imposed upon the appellants vide judgment and order dated 28.08.2015 passed by the learned Additional Sessions Judge, SBS Nagar, are hereby set aside. Accordingly, accused-appellants are acquitted of the charges against them in view of the compromise arrived at between the parties. Appellants no. 1 and 2 are on bail. Their bail bonds and sureties stand discharged. Probation bonds/sureties of appellants no. 3 to 5 also stand discharged.

Appeal is accordingly allowed in terms of the settlement.

08.11.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned

:

Yes/No.

Whether reportable

:

Yes/No.