

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10970 of 2017 (O&M)
Date of Decision: September 18, 2017

Vinod Kumar Ohri and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pratham Sethi, Advocate
for the petitioners.
Mr. Randeep Singh Khaira, Assistant Advocate
General, Punjab.
Ms.Bhawna Thakur, Advocate
for respondent No.2

ARVIND SINGH SANGWAN, J.

Petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of Criminal Complaint No. 1962 (earlier complaint No.5) dated 23.2.2010, under Sections 420/467/468/471/120-B of the Indian Penal Code, 1860 ('IPC' for short), titled as '*Amit Ohri vs. Vinod Kumar Ohri and others*' (Annexure P1) and all consequential proceedings arising therefrom, on the basis of compromise dated 23.3.2017 (Annexure P3) as well as the judgment of conviction and order of sentence dated 22.9.2016 vide which the trial Court convicted the petitioners-Vinod Kumar Ohri, Surinder Mohan Ohri and Parmal Kumar Ohri under Sections 420, 467, 468 and 471 read with Section 120-B IPC for

simple imprisonment for three years and to pay a fine of ₹1000/- each (Anneuxre P2) . Their appeal is pending in the Court of Sessions.

Vide order dated 28.8.2017, a direction was given to the Lower Appellate Court to record the statements of the parties and submit a report regarding the genuineness of the compromise effected between the parties and also to intimate whether any other case is pending against either of the parties and if any proceeding to declare any accused proclaimed offender is pending or not.

In pursuance thereof, the trial Court has submitted a report dated 11.9.2017 (forwarded by the District and Sessions Judge, Kapurthala on 12.9.2017), after recording the statements of the parties, that the complainant-Amit Ohri and accused-Vinod Kumar Ohri, Surinder Mohan Ohri and Parmal Kumar Ohri have appeared along with their respective counsel, who had identified them and got their statements recorded acknowledging that the compromise had been effected voluntarily, without any coercion or any undue influence. This fact is not disputed by learned State Counsel, who has submitted, on instructions from Assistant Sub Inspector-Jaswinder Singh that the petitioners are not the proclaimed offenders.

Perusal of allegations in the FIR reveals that the present case squarely falls in the category of cases that can be quashed by the High Court, in exercise of its inherent power under Section 482 of the Code. Keeping in view authoritative enunciation of law laid down by Hon'ble the Supreme Court of India in “**Gian Singh vs State of Punjab and another**”, **2012(4) R.C.R. (Criminal) 543** and in the light of facts and circumstances

of the present case, this Court is of the considered opinion that continuation of criminal proceedings would amount to abuse of process of law and it is expedient in the interest of justice that criminal proceedings are put to an end.

As per the Full Bench judgement of this Court in **Kulwinder Singh and others vs. State of Punjab, 2007 (3) RCR (Criminal) 1052**, High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court felt that the same was required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

As per the Division Bench judgement in **Sube Singh and another Vs. State of H Sube Singh and another Vs. State of Haryana and another** 2013 (4) R.C.R. (Criminal) 102, it is held by this Court that the compounding of offence at the appellate stage is permissible on the basis of the compromise by invoking the power under Section 482 Cr.P.C. even after the conviction of accused person by the trial Court and during the pendency of the appeal against such conviction and , following questions were framed for consideration therein:-

“(1) Whether the power exercisable by the High Court under Section 482 Cr. P.C. is controlled by Section 320 Cr. P.C. or it can be invoked in an appropriate case even if the offences are not compoundable in nature? (2) Whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Cr. P.C. even after the accused was found guilty and convicted by the

trial court though the matter is sub judice before the appellate court?”

While dealing with question No.1, this Court in para 15 of the judgment has held as under:- “The refusal to invoke power under Section 320 Cr. P.C., however, does not debar the High Court from resorting to its inherent power under Section 482 Cr. P.C. and pass an appropriate order so as to secure the ends of justice.” While dealing with question No.2, this Court in paras 16, 17 and 21 of the judgment has held under:- “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 (2)RCR (Criminal) 910, (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.

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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 Cr. P.C. 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.”

Since the parties have arrived at a compromise and have decided to live in peace, no useful purpose would be served in allowing the criminal proceedings to continue. However, petitioners are liable to deposit the costs of proceedings in the sum of ₹ 50,000/-.

Accordingly, this petition is allowed. Criminal Complaint No. 1962 dated 23.2.2010 titled as '*Amit Ohri vs. Vinod Kumar Ohri and others*' under Sections 420/467/468/471/120-B IPC (Annexure P1) and all the consequential proceedings, arising therefrom are ordered to be quashed and the judgment of conviction and order of sentence dated 22.9.2016, are ordered to be set aside, subject to petitioners' depositing of costs in the sum of ₹ 50,000/- with the District Legal Services Authority, Kapurthala within eight weeks from today, failing which this order shall stand recalled automatically without reference to the Court. The lower appellate Court shall consign the file to record room only after the costs is deposited.

(ARVIND SINGH SANGWAN)
JUDGE

September 18, 2017
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No