IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17465-2017
Date of decision: 20.11.2017

Balwinder @ Binder and others ...Petitioners

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Vipan Kumar Sharma, Advocate for the petitioners

Mr.Arun Kumar, AAG, Haryana

Mr.Ajay Shrama, Advocate for respondent No.2.

****

JITENDRA CHAUHAN, J.

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.0019 dated 16.4.2016 registered under Sections 406, 498-A and 506 of the Indian Penal Code (for short 'the IPC'), at Police Station Women, District Ambala, and all consequential proceedings arising therefrom, on the basis of compromise (Annexure P-2) arrived at between the parties.

Vide order dated 17.5.2017, the parties were directed to appear before the learned trial Court, for getting their statements recorded. In compliance thereof, report of Judicial Magistrate, 1st Class, Ambala dated 25.5.2017, has been received, wherein, it has been noticed that the compromise between the parties is genuine, voluntary and reached without any fera or pressure.

Hon'ble the Supreme Court in ***Gian Singh Vs. State of Punjab and another, 2012(4) RCR (Criminal) 543,*** has observed as

Gauri Shanker
2017.11.21 16:41
I attest to the accuracy and
integrity of this document
Chandigarh

under:-

> *"57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it*

Gauri Shanker
2017.11.21 16:41
I attest to the accuracy and
integrity of this document
Chandigarh

would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

In ***Narinder Singh and Others Vs. State of Punjab and Another (2014) 6 SCC 466,*** it has been observed thus:-

"31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II)When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:
(i) ends of justice, or
(ii) to prevent abuse of the process of any Court.
While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society.

Gauri Shanker
2017.11.21 16:41
I attest to the accuracy and
integrity of this document
Chandigarh

Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in

Gauri Shanker
2017.11.21 16:41
I attest to the accuracy and
integrity of this document
Chandigarh

> *harmony between them which may improve their future relationship.*
>
> *(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."*

Hence, in view of the report of the JMIC, Ambala, dated 25.5.2017 made in pursuance of the order dated 17.5.2017 passed by this Court, and the guidelines laid down by Hon'ble the Supreme Court, this Court feels that no useful purpose would be served in keeping the proceedings alive. It will be in the interest of justice, if the settlement reached between the parties is accepted.

Gauri Shanker
2017.11.21 16:41
I attest to the accuracy and
integrity of this document
Chandigarh

Accordingly, the present petition is allowed. FIR No.0019 dated 16.4.2016 registered under Sections 406, 498-A and 506 IPC, at Police Station Women, District Ambala, and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner (s).

20.11.2017 **(JITENDRA CHAUHAN)**
gsv **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No

Gauri Shanker
2017.11.21 16:41
I attest to the accuracy and
integrity of this document
Chandigarh