

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

**CRM No.M-25264 of 2016 (O&M)
Date of decision: 28.03.2017**

Rinku Devi

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Harkanwar Jeet Singh, Advocate for the petitioner.

Mr. P.S. .Madahar, AAG, Punjab.

Mr. Manpreet Singh Dua, Advocate for respondent No.2 and 3.

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.17, dated 29.01.2015, under Section 306 IPC, registered at Police Station Dakha, District Ludhiana.

It may be briefly noticed that FIR came to be registered on the statement of Guddi Devi wife of Arun Bhagat. Deceased is Vikas Bhagat i.e. the step son of the complainant and who is alleged to have committed suicide by hanging on 28.01.2015. Complainant asserted that it was her second marriage with Arun Bhagat. From the first marriage of her husband Arun Bhagat, two children were born i.e. one son, namely, Vikas Bhagat (since deceased) and one daughter Julie Devi. It is alleged that at about 7 AM on 28.01.2015, the present petitioner, namely, Rinku Devi wife of the deceased established telephonic contact that Vikas Bhagat has hanged himself and has died . Accordingly the complainant and her husband, Arun Bhagat gave statements and proceedings under Section 174 Cr.P.C. were conducted and after post mortem, the dead body

was taken for cremation at Ludhiana. A finger of suspicion was raised upon the present petitioner by alleging that neither she nor her family members came to attend the last rites. Complainant further alleged that she later on came to know that the present petitioner had gone away with somebody in the month of October, 2014 and when she came back to her matrimonial home, she was demanding divorce from her husband and was fighting with him and on account of such harassment, Vikas Bhagat took the extreme step of ending his life.

The instant petition has been filed on the strength of a compromise which the petitioner is stated to have entered into with the complainant, Guddi Devi.

On 12.12.2016, a coordinate Bench of this Court had directed the parties to appear before the Illaqa Magistrate for recording of their statements in support of the compromise.

On the last date of hearing i.e. on 08.02.2017, this Court had noticed that even though statements of the petitioner Rinku Devi and complainant Guddi Devi had been duly recorded, yet the statement of Arun Bhagat (respondent No.3) and who was concededly the biological father of the deceased Vikas Bhagat has not been recorded. Accordingly, it was directed that the statement of Arun Bhagat be also recorded before the trial Court as regards veracity of the compromise and a supplementary report was called for.

Placed on record are two reports dated 17.01.2017 of the learned Additional District and Sessions Judge, Ludhiana, which reflects that the statements of the petitioner and complainant Guddi Devi have been recorded. The second report is a supplementary report dated 18.02.2017 also of the Additional District and Sessions Judge, Ludhiana after recording of statement of Arun Bhagat.

A conjoint reading of both the reports would reveal that after recording of the statements of the complainant Guddi Devi i.e. step mother of the deceased, Arun Bhagat (the biological father of the deceased) as also of the accused/Rinku Devi i.e. wife of the deceased, it has been opined that a compromise has been entered into voluntarily and without any pressure or coercion.

The power of the High Court under Section 482 of the Code to quash the proceedings in such offences which are non compoundable has been recognized by the Hon'ble Supreme Court of India in a catena of judgments. The distinction between the power of compounding of offences given to the Court under Section 320 of the Code and quashing of the criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred under Section 482 of the Code has been explained in **Gian Singh v. State of Punjab and another, 2012(4) RCR (Criminal) 543**, and it was observed as follows:

“Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.”

In a recent judgment rendered by the Apex Court in **Narinder Singh and others v. State of Punjab and another, 2014 (2) RCR (Criminal) 482**, principles have been culled out for guidance of the High Court while examining a settlement between the parties and exercising the power under Section 482 of the Code. The principles laid down are in the following terms:

“(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 to 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. 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 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.”

Adverting back to the facts of the present case, this Court is of the view that it would be a fit case for exercise of powers under Section 482 Cr.P.C. to bring to an end the criminal prosecution launched on the basis of the impugned FIR. In taking such a view, apart from the fact that statements of all the parties concerned have been recorded, what has weighed with the Court is that even if the assertions/allegations made by the complainant and which led to the registration of the FIR are taken to be correct at their face value, yet the offence for abetment to suicide would not be made out. The complainant had not attributed any direct/overt role to the present petitioner and which could be construed as having left Vikas Bhagat (since deceased) with no other option but to end his life.

Continuation of prosecution would be taken as an abuse of the process of law as also of the Court.

For the reasons recorded above, the present petition is allowed. FIR No.17, dated 29.01.2015, under Section 306 IPC, registered at Police Station Dakha, District Ludhiana and all proceedings emanating therefrom are set aside.

Petition allowed in the aforesaid terms.

28.03.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |