

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: 27.07.2017

CRM-M -2963-2017

Partap Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CRM-M -3412-2017

Amar Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present: Mr. Krishan K.Thakur,Advocate
(in CRM-M-2963-2017) and
Mr.R.S.Sekhon,Advocate
(CRM-M -3412-2017) for the petitioners.
Mr.R.P.Khaira, Assistant Advocate General,
Punjab.
Mr.R.S.Sekhon,Advocate for respondent
No.2 -Balwinder Singh
(CRM-M -2963-2017)
Mr.Krishan K.Thakur,Advocate for respondents No.2
(CRM-M-3412-2017)

Arvind Singh Sangwan, J.

This order will dispose of above mentioned two petitions i.e. CRM-M-2963-2017 and CRM-M-3412-2017. In the petition (CRM-M-2963-2017), petitioners are seeking quashing of FIR No.249 dated 10.11.2016 under Sections 307,308,326,325,324,323 read with Section 34 of the Indian Penal Code, 1860 (IPC for short) at Police Station Sadar Ferozepur, District Ferozepur. In the petition (CRM-M-3412-2017), petitioners are seeking quashing of a cross case rapat No. 16 dated 12.11.2016 under Sections 325,323 read with Section 34 IPC (Section 307 IPC added later on) registered at Police Station Sadar Ferozepur District Ferozepur along with all consequential proceedings arising therefrom on the basis of compromise dated 30.12.2016.

It is not disputed that both the parties in these petitions are seeking quashing of DDR/FIR which are cross case against each other on the basis of compromise dated 30.12.2016.

Vide order of this Court, Illaqa Magistrate was directed to record the statements of the parties and send its report with regard to genuineness of the compromise effected between the parties and whether any of the accused has been declared as proclaimed offender.

In pursuance to the said order, the trial Court, after recording the statements of the parties, has reported on 27.2.2017 that the parties have appeared and identified by their respective counsel representing them in the trial Court and that the compromise effected between the parties was voluntarily and without any coercion, pressure and none of the accused has

been declared as proclaimed offender. This fact is not disputed by learned State Counsel, who has submitted, on instructions from Assistant Sub Inspector-Lakhvir Singh, that the petitioners are not the proclaimed offenders.

Learned counsel for the petitioners has submitted that in this case even otherwise the ingredients of Section 307 IPC is not made out as the doctor has opined regarding injury on Amar Singh that it is a grievous injury could be dangerous to life. Therefore, doctor has not given a specific opinion that, in fact, this injury is dangerous to life.

The quashing of criminal proceedings in an offence under Section 307 IPC came up for detailed discussion before the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another**, 2014(2) RCR (Cr1.) 482. After due consideration the Hon'ble Apex Court formalised the issue of compounding of offences under Section 307 IPC to say that it is an offence against society and is non-compoundable, but in certain cases the High Court would be guided to give adequate treatment to the settlement between the parties in exercise of inherent powers under Section 482 Cr.P.C. Following principles were laid down in para 31 of the judgment:-

“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 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.”

In nutshell each case has to be considered on its own merits. While exercising inherent powers, High Court has to examine whether possibility of conviction is bleak and continuation of proceedings would put the accused to great oppression and prejudice and would result in futility. Offence under Section 307 IPC falls under the category of heinous offence and generally it is to be treated offence against the State/society and not an individual offence. At the same time High Court would not base its decision merely because offence under Section 307 IPC is mentioned in the FIR or in the charge. It is still open before the Court as to whether insertion of offence under Section 307 IPC is based on evidence or it is just for the sake of incorporation in the FIR. In a way, Court is empowered to look into the nature of injury sustained by the victim, whether such injury is inflicted on the vital parts of the body, the nature of weapon used in the crime, medical

evidence brought on record in respect of injuries sustained by the victim, place of occurrence and stage of the case are the relevant factors on which this Court can examine as to whether there is strong possibility of conviction or the chances of conviction are bleak and remote. In case of quashing of criminal prosecution arising out of offence under Section 307 IPC, following facts are necessary to be considered for arriving at the conclusion i.e.:-

- (i) Whether offence would remain an offence against State/society or it can be diluted, if weapon used is not deadly weapon,
- (ii) Place where occurrence took place is not publicly exposed so as to exhibit action in open before the society.
- (iii) Medical opinion is such that it aggravated with the passage of time and ultimately brought the offence within the fold of 307 IPC, and
- (iv) the offence is the outcome of any matrimonial discord between the parties.

Consideration of principles highlighted and guidelines framed reveal that the Court has to weigh the culpability on the aforesaid criterion and if the alleged act can be segregated to mean that it was not in public view nor it was exhibited in public view with deadly weapon and if the medical evidence is also based on opinion, evidence highlighting happening or nonhappening of particular event then the offence under Section 307 IPC can be considered for compounding on the basis of compromise.

As per the Full Bench judgment 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.

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.

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.

Accordingly, both the petitions are allowed. FIR No.249 dated 10.11.2016 under Sections 307, 308, 326, 325, 324, 323 read with Section 34 IPC at Police Station Sadar Ferozepur and cross case rapat No. 16 dated 12.11.2016 under Sections 325, 323 read with Section 34 IPC (Section 307 IPC added later on) registered at Police Station Sadar

Ferozepur District Ferozepur along with all the consequential proceedings,
arising therefrom, are ordered to be quashed .

(ARVIND SINGH SANGWAN)
JUDGE

July 27, 2017

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No