

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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CRM-M-35613-2015.

Date of Decision: 19.12.2017.

Vinod Kumar and others

....Petitioners.

Versus

State of Punjab and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Pradeep Sharma, Advocate, for the petitioners.

Mr. A.S. Sandhu, Additional Advocate General, Punjab.

Mr. Kirat Pal Dhaliwal, Advocate, for
Mr. Rahul Sharma, Advocate, for respondent No.2.

Ramendra Jain, J.(Oral)

Through this petition under Section 482 of the Code of Criminal Procedure, prayer has been made for quashing F.I.R. No.91 dated 04.11.2011 registered under Sections 452 and 323 read with Section 34 of the Indian Penal Code, at Police Station Sadar Abohar, District Ferozepur as well as judgment of conviction and order of sentence dated 12.08.2015 passed by Judicial Magistrate Ist Class, Abohar, on the basis of compromise dated 30.09.2015 (Annexure P2).

Vide order dated 24.07.2017 passed by this Court, the parties were directed to appear before the trial Court/ Illaqa Magistrate, for recording their statements qua compromise with a direction to the trial Court/ Illaqa Magistrate to furnish a report regarding veracity thereof, if any, between the parties.

Pursuant thereto, report from the Additional Sessions Judge, Fazilka vide covering letter No.265 dated 18.09.2017 with the forwarding letter of learned District and Sessions Judge, Ferozepur bearing No.9079/CB dated 20.09.2017 has been received, according to which, compromise in between the parties is voluntary, without any duress, coercion or threat of any kind, rather the same has been effected in order to keep peace and harmony and to restore cordial relations between the parties.

The petitioners were held guilty by learned Judicial Magistrate Ist Class, Abohar, vide judgment of conviction dated 12.08.2015. Vide order of even date, the petitioners were sentenced to undergo rigorous imprisonment for a period of two years each and to pay a fine of ₹1000/- each under Section 452 IPC. In default thereof, to further undergo rigorous imprisonment for two months. They were further sentenced to undergo rigorous imprisonment for a period of six months each under Section 323/34 IPC.

Being aggrieved, the petitioners preferred an appeal against the aforesaid judgment of conviction and order of sentence, which is still pending adjudication. During pendency of the said appeal, the parties have amicably compromised the matter.

The question is as to whether compounding of offence can be permitted even in non compoundable offence at the appellate stage after conviction of an accused on the basis of compromise. The relevant portion of the judgment by a Division Bench of this Court in **Sube Singh and another vs. State of Haryana and another, 2013(4) R.C.R. (Criminal) 102**

is reproduced as under:-

*“(11) The extent and sweep of inherent power exercisable by the High Court under Section 482 CrPC for quashing the criminal proceedings on the basis of compromise between the offender and the victim of crime in a case which is not compoundable under Section 320 CrPC, has since been considered in extenso and answered by the Hon’ble Supreme Court in **Gian Singh vs. State of Punjab & Anr., (2012) 4 RCR (Crl.) 543**, laying down that the compounding of offence and quashing of criminal proceedings are two separate things and not interchangeable and that the two powers are distinct and different although ultimate consequence may be the same. It has been authoritatively ruled that where the offender and victim have settled their dispute, the High Court in exercise of its inherent power under Section 482 CrPC, is competent to quash criminal proceedings even relating to the non-compoundable offences though such a power need to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc. The pronouncement thus says:-*

“53. 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.

(12) *The decision in Gian Singh's case (supra) also approves the view taken by a five-Judge Bench of this Court in **Kulwinder Singh & Ors. vs. State of Punjab & Anr., 2007(3) RCR (CrL.) 1052.***

(13) *It is indeed now unarguable to say that the power exercisable by the High Court under Section 482 CrPC for the quashing of criminal prosecution is limited or affected by the provision of Section 320 CrPC.*

(15) *The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 CrPC and pass an appropriate order so as to secure the ends of justice.*

(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.

Considering the aforesaid dictum in **Sube Singh's** case (supra) and the fact that there is no statutory embargo against invoking powers under Section 482 Cr.P.C. after conviction of accused by the trial Court and during pendency of the appeal against such conviction and further that the compromise will bring harmony in relations between the parties, the petition is accepted and aforesaid F.I.R. No.91 qua the petitioners, is hereby quashed. The judgment of conviction and order of sentence dated 12.08.2015 recorded by learned trial Court are set aside on the basis of compromise arrived at between the parties. Resultantly, the appeal preferred by the petitioners against the above-mentioned judgment of conviction and order of sentence would be rendered infructuous and shall also be so declared by the first appellate Court at Fazilka, subject to depositing costs of **₹10,000/-** by the petitioners with the Punjab Legal Services Authority, Chandigarh within one week, failing which this petition shall be deemed to be dismissed.

List on 08.01.2018 for production of receipt regarding deposit of costs.

(RAMENDRA JAIN)
JUDGE

19.12.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No