

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

**CRM-M No.36691 of 2016
Date of Decision-07.02.2017**

Chanddevjit Singh and another ... Petitioners

Versus

State of Punjab and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Isha Goyal, Advocate for the petitioners.

Mr. P.S. Ghuman, Addl. AG, Punjab.

Mr. Gaurav Kathuria, Advocate for
respondents No.2 to 5.

RAJ MOHAN SINGH, J.

[1]. Petitioners have sought quashing of FIR No.204 dated 14.09.2016 registered under Sections 307, 148, 149 IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Cantonment, District Amritsar and entire subsequent proceedings arising therefrom on the basis of compromise.

[2]. The FIR was registered on the basis of statement of Gurlal Singh to the following effect:-

“Statement of Gurlal Singh S/o Ranjit Singh Caste Jat R/o Village Neshta, Police Station Gharinda, Amritsar aged around 20 years. Stated that I am resident of above mentioned address and I am pursuing B.A from Khalsa College, Amritsar. Chand Dev Randhawa R/o Chand Avenue Fatehgarh Churian Road, Amritsar is also studying with me. Chand Dev Randhawa told Rajan S/o Baldev Singh R/o Attari and Ranjit Singh R/o Attari, who are

studying with me that Gurlal Singh uses bad words against both of you and is saying that both of you are fagots ("Gaandu") types of persons. That Rajan and Ranjit asked me about this fact as to whether you are illegally denigrating us to which I clarified and they agreed with me. When Chand Dev Randhawa got to know about this fact then today he called up my friend Prabhdeep Singh S/o Bhagwant Singh R/o Bhikhiwind over mobile and asked him bring Gurlal to Kabir Park Market and we will sit there and talk. Whereby me, Rajan, Malkit Singh, Prabhdeep above named around 3:30 in the afternoon reached Kabir Park Market, then Chand Dev Randhawa along with Amrit Singh Kalanaur who is studying with us and 7/8 other boys, whom I can identify if they come in front of me. That above boys came there in XUV and I-20 vehicles. Chand Dev Randhawa was having 12 bore Rifle and Amrit Singh was having Pistol, then after getting down from the vehicles, Chand Dev Randhawa raised a Lalkara that catch hold of them as they are messing with us, other boys were empty handed. That Chand Dev Randhawa and Amrit Singh with an intention to kill us started firing upon us with their respective weapons. One bullet passed over touching the right shoulder of Rajan above named and Prabhdeep suffered injuries near his calf from the Pallets and Malkiat Singh suffered injuries from the Pallets on his left shoulder. That I raised an alarm and shouted "Maar Ditta Maar Ditta", then above named attackers sped away boarding their respective vehicles with their respective weapons. These attackers launched an attack upon me and my friends with consent of each other with an intention to kill us. Harshest action may be initiated against them Sd:- Gurlal Singh above named Sd:- Gurlan Singh 94785-06510. Attested Sd:- Vipin Kumar SI I/C PP Kabir Park Amritsar City dated

14.09.2016. Police proceedings:- Today myself SI along with HC Amarjit Singh 3406, HC Bhupinder Singh 3442, HC Surjit Singh 1430 were present at T-Point Kabir Park in search of Anti Social Elements. Where complainant Gurlal Singh came present and who suffered his above mentioned statement, which was read over to him, who upon hearing and believing his statement as true, appended his signatures underneath the statement in English Language which was attested by me. Keeping in view of the contents of the statement prima facie a case is made out under Sections 307, 148, 149 of IPC, 25/27-54-59 of Arms Act. So for registration of the case the statement is being sent by hand through HC Bhupinder Singh 3442 to Police Station. After registration of the case, number of the same may be informed. Special reports may be issued and sent for the kind perusal of Duty Magistrate. Myself SI along with fellow employees accompanied by complainant is proceeding to the spot. Sd/- Vipin Kumar SI I/C PP Kabir Park Amritsar City dated 14.09.2016.”

[3]. Perusal of aforesaid FIR revealed that the accused-petitioners started firing and one bullet passed over the right shoulder of Rajan by touching the same. Investigation further revealed that Rajan was not admitted in the hospital. Second injured Prabhdeep suffered injuries near his calf from the Pallets and Malkiat Singh suffered injuries on his left shoulder. Investigation further revealed that the injured persons left the hospital against the medical advice. As a result of aforesaid, it appeared on record that both the parties being students were acted in a rush of blood with some uncertainties in their mind,

unmindful of the fact that criminal prosecution has to be brought to culmination on the basis of evidence which could be sufficient to prove culpability beyond all reasonable doubts. Since both the parties acted with their collective wisdom at a later stage and entered into a compromise on 21.09.2016, thereby deciding to end the enmity and resolved their dispute once for all in a matured manner. They have decided to bury their hatred towards each other. The terms and conditions of the compromise are to the following effect:-

“1. That both the parties are well acquainted with and well known to each other and have been enjoying friendly as well as personal ties since long.

2. That on account of certain misunderstandings as well as miscommunications FIR No.0204 was registered on 14.09.2016 for offences under Sections 307, 148, 149 IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Cantonment, District Police Commissionerate by Gurlal Singh of Party No.1 against Party No.2 as well as certain unidentified persons. As per the FIR, the allegation is that Party No.2 had fired on Party No.1 and the bullet/pallets hit Rajanbir Singh, Prabhdeep Singh and Malkiat Singh of Party No.1. Suffice it to say, no serious injury has been suffered by any person and all of them are hale and hearty.

3. That the FIR is a clear result of misconception, misunderstanding and a sheer gap of miscommunication. Both the parties are in complete agreement and clearly acknowledge that all proceedings should come to an end

and they should revive their ties in true spirit of camaraderie and brotherhood.

4. That the Party No.1 shall have no objection in case the proceedings arising out of the FIR (supra) registered against the Party No.2 are either quashed by the Hon'ble High Court or the case is cancelled by the police. To facilitate such quashing/cancellation, members of the Party No.1 undertake to file their respective affidavits and also appear before any court or forum to record their respective statements tendering their no objection as well as verifying the factum of the instant compromise.

5. That members of Party No.1 shall also have no objection for release of any members of Party No.2 on bail or pre-arrest bail and for that purpose shall appear before any Court or Investigating Agency and tender their affidavit reiterating their no objection as well as verifying the factum of compromise.

6. That now no grudge is left between the parties. Both the parties have decided that they will not initiate any action against each other before any criminal or civil court. No party shall have any claim or lien against each other in future on any count whatsoever.

7. That the parties shall remain unflinchingly bound by the terms and conditions set forth in the instant compromise deed.

8. That the parties shall execute their respective affidavits solemnly affirming the contents of the instant compromise deed.

9. That this compromise has taken place at Amritsar on September 21, 2016 without any coercion, fraud, influence, threat and duress etc and the same has been executed

with free will and volition by the parties. The contents of this compromise deed have been read over and explained to the parties in simple vernacular language as well, and all the parties after admitting the same as correct, have signed/executed this compromise in the presence of witnesses.

[4]. While taking cognizance of the present petition, Coordinate Bench of this Court passed the following order on 17.10.2016:-

“The present petition has been filed under Section 482 Cr.P.C. for quashing of F.I.R. No.204 dated 14.09.2016 registered under Sections 307, 148, 149 IPC and Sections 25 & 27 of the Arms Act at Police Station Cantonment, District Amritsar and all other consequential proceedings arising therefrom on the basis of compromise effected between the parties.

Learned counsel for the petitioners states that the offence under Section 307 IPC is not made out on the facts of the present case.

Notice of motion.

On the asking of the Court, Mr. B.S. Thind, Assistant Advocate General, Punjab, accepts notice on behalf of the respondent No.1.

Mr. Gorav Kathuria, Advocate has entered appearance on behalf of respondent No.2.

Learned counsel for the petitioners undertakes to supply a copy of the petition to the learned opposite counsel during the course of the day.

To come up on 10.01.2017. Meanwhile, the parties are directed to be present before the Illaqa Magistrate on 22.11.2016 or on any other date convenient to the Court for

recording their statements with regard to compromise. The Court is directed to record the statements of both the parties to its satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. The Court is further directed to send report along with the statements of the parties with regard to validity or otherwise of the compromise effected between the parties and also intimate whether any criminal case and proclamation proceedings is pending against either of the parties before the next date of hearing.”

[5]. In pursuance of appearance of the parties before the Illaqa Magistrate, the Court recorded the statements of both the parties in the context of genuineness of the compromise in question and has endorsed that the compromise is the result of free will and voluntary in nature. A report to this effect has been sent by the Judicial Magistrate Ist Class, Amritsar on 15.12.2016.

[6]. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in ***Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47***, ***Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604*** and ***State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489***, has summed up the controversy in ***State through Special Cell, New Delhi vs. Navjot Sandhu @***

Afshan Guru and others, 2003(2) RCR (Crl.) 860 (SC). The legal position summed up in the said judgment is in the following manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in

some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.”

[7]. Full Bench of this Court in ***Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.) 1052*** considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The

powers under Section 482 Cr.P.C., is to be exercised *Ex-Debitia, justitia* to prevent abuse of process of Court.

[8]. In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of commercial, financial, mercantile and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise.

In ***Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.) 543***, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in the following manner:-

“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-dominantly 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 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.”

[9]. 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 (Crl.) 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.”

[10]. 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 non-happening of particular event then the offence under Section 307 IPC can be considered for compounding on the basis of compromise.

[11]. The FIR in question came to be registered only on 14.09.2016. The case itself is at initial stage. The material collected by the Investigating Agency so far is suggestive of the fact that the injured persons either have not been admitted in the hospital or they have left the hospital against the medical advice. At this initial stage of the case, the parameters laid down by the Hon'ble Apex Court in **Narinder Singh and others case (supra)** would come in favour of the parties as the Court would not rest its decision merely because offence under Section 307 IPC has been incorporated in the Police papers. In view of settlement arrived at between the parties, the ultimate conviction of the accused would be a far-fetched as the complainant would not depose against the accused persons on account of compromise. The possibility of conviction is remote and bleak and continuation of criminal proceedings would put the accused to great oppression and prejudice and extreme injustice would be caused

to them. The alleged injuries on the injured persons could not be materialized in terms of medical evidence. Injured Rajan was not hospitalized and injured Prabhdeep and another left the hospital against the medical advice. Even otherwise, the Pallets only touched the shoulder and calf of the injured persons.

[12]. Since the police has not concluded the investigation, therefore, at this juncture, no final opinion can be formed whether the material collected at this stage would lead conviction of accused persons. At this juncture, the Court can only be swayed by the fact that the settlement between the parties would create a harmonious atmosphere between the parties so as to improve their future relationship. The *prima facie* analysis of the facts would not be in favour of continuation of proceedings particularly when the complainant party has given up the grievance against the accused by way of compromise. In view of aforesaid, there cannot be any strong possibility of conviction of the accused persons.

[13]. While exercising powers under Section 482 Cr.P.C, the timing of the settlement plays a crucial role. The settlement has come immediately after alleged commission of offence when the matter is still under investigation. The FIR was registered on 14.09.2016 and the parties arrived at amicable settlement on 21.09.2016 i.e. after 7 days of occurrence. Both the parties are comprising of youth and students and they have long way to live

their lives. As per guidelines laid down in **Narinder Singh and others case (supra)** in para No.31 (VII), the case can be considered for quashing of criminal proceedings when the investigation is still pending and chargesheet has not been filed. In view of settlement arrived at between the parties, there would be a fancy trial.

[14]. Taking into consideration totality of facts and circumstances, this Court is of the view that the case can be considered for quashing of FIR along with subsequent proceedings arising therefrom on the basis of compromise. Consequently, this criminal petition is allowed. FIR No.204 dated 14.09.2016 registered under Sections 307, 148, 149 IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Cantonment, District Amritsar and entire subsequent proceedings arising therefrom are hereby quashed.

(RAJ MOHAN SINGH)
JUDGE

07.02.2017
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No