

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

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CRM-M-36982-2016

Date of Decision: 07.11.2017.

Sitar Mohammad

....Petitioner.

Versus

State of Punjab and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Raman Goklaney, Advocate for the petitioner.

Mr. Rana Harjasdeep Singh, Assistant Advocate General,
Punjab.

Mr. Rahul Arora, Advocate, for
Ms. Manpreet Kaur, Advocate for respondent No.2.

Ramendra Jain, J.(Oral)

Prayer in the instant petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') has been made for quashing F.I.R. No.102 dated 28.07.2012 registered under Section 420 of the Indian Penal Code (for short, 'IPC') read with Section 15(2) of Indian Medical Council Act, 1956 (for short, 'the Act of 1956') at Police Station City, Jalalabad District Fazilka as well as judgment of conviction and order of sentence dated 10.09.2015 passed by Sub Divisional Judicial Magistrate, Jalalabad(W), on the basis of compromise dated 04.10.2016 (Annexure P3).

On presentation of the petition, vide order dated 18.10.2016 passed by a co-ordinate Bench of this Court, an interim direction was issued

to the appellate Court to record the statements of the parties regarding matter having been compromised and submit report whether the compromise has been arrived at voluntarily, without any threat, coercion or undue influence and that rights of any third party are not affected by the compromise.

Pursuant thereto, report from the Additional Sessions Judge, Fazilka bearing No.603 dated 25.11.2016 with the forwarding letter of learned District and Sessions Judge, Ferozepur bearing No.11286/CB dated 01.12.2016 has been received, according to which, compromise in between the parties is genuine, voluntary, without any pressure or coercion.

The petitioners were held guilty by learned Sub Divisional Judicial Magistrate, Jalalabad (West) vide judgment of conviction dated 10.09.2015. Vide order of even date, the petitioner was sentenced to undergo imprisonment for a period of one year and to pay a fine of ₹1000/- under Section 15(3) of the Act of 1956. In default thereof to further undergo rigorous imprisonment for a period of 15 days.

Being aggrieved, the petitioner 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.102 qua the petitioner, is hereby quashed. The judgment of conviction and order of sentence dated 10.09.2015 recorded by learned trial Court are set aside on the basis of compromise arrived at between the parties. Resultantly, the appeal preferred by the petitioner 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.

(RAMENDRA JAIN)
JUDGE

07.11.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No