

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: 28.07.2017

CRM-M -39236-2015

Jai Chand and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CRM-M -39218-2015

Lachman Dass and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present: Mr. J.S.Grewal, Advocate
(in CRM-M-39236-2015) and
Ms.Manpreet Kaur, Advocate
(CRM-M -39218-2017) for the petitioners.

Mr.R.P.Khaira, Assistant Advocate General,
Punjab.

Ms.Manpreet Kaur, Advocate for respondent
No.2
(CRM-M-39236-2015)

Mr. J.S.Grewal, Advocate for respondents No.2 &3
(CRM-M -39218-2017)

Arvind Singh Sangwan, J.

This order will dispose of above mentioned two petitions i.e. CRM-M-39236-2015 and CRM-M -39218-2017. In the petition (CRM-M-39236-2015), petitioners are seeking quashing of FIR No.327 dated 28.10.2009 under Sections 323, 324, read with Section 34 (326 added later on) IPC registered at Police Station City Abohar District Ferozepur (now Fazilka) (chargesheeted under Sections 326,323,324 read with Section 34 IPC) (Annexure P1) and In CRM-M-39218-2017 petitioners are seeking quashing of complaint dated 23.12.2009 registered under Sections 452, 323,504,506 read with Section 34 IPC (charged 323,452,504,506 IPC) along with all consequential proceedings arising therefrom on the basis of compromise.

Since the trial Court has convicted the petitioners; Jai Chand was awarded imprisonment for a period of three years and to pay a fine of ₹2000/- under Section 326 IPC, Hari Chand was ordered to undergo rigorous imprisonment for a period of one year and to pay fine of ₹1000/- under Section 324 IPC and Baggan Bai was awarded sentence of six months under Section 323 IPC vide judgment/order dated 26.2.2015, the petitioners have already filed appeal which is now pending before the Additional Sessions Judge Fazilka. A cross version was also registered in this FIR. Vide judgment of conviction and order of sentence dated 26.2.2015, Mohinder Pal, Deepu, Lachman Dass and Ram Chand in the cross version have been ordered to undergo imprisonment of six months under Section 323 IPC.

Since the parties are relating to the same village and are in brotherhood, they have entered into compromise dated 15.9.2015, a direction was issued to the appellate Court for recording the statements of the parties about the validity of compromise vide order dated 21.3.2017 and to send its report with regard to genuineness of the compromise effected between the parties and whether any of the accused is proclaimed offender.

In pursuance to the said order, the Appellate Court, has submitted a report on 7.4.2017 that out of four accused namely, Jai Chand, Hari Chand, Dharam Chand and Bhagan Bai against whom FIR was registered, one Dharam Chand was acquitted and none of the accused has been declared as proclaimed offender. Appellate Court, after recording the statements of the parties further reported that all the parties have appeared and identified by their respective counsel representing them in the appellate Court and that the compromise effected between the parties was voluntarily and without any coercion, pressure .

As per the Division Bench judgement in **Sube Singh and another Vs. State of Haryana** 2013 (4) R.C.R. (Criminal) 102, it is held by this Court that the compounding of offence at the appellate stage is permissible on the basis of the compromise by invoking the power under Section 482 Cr.P.C. even after the conviction of accused person by the trial Court and during the pendency of the appeal against such conviction and , following questions were framed for consideration therein:-

“(1) Whether the power exercisable by the High Court under

Section 482 Cr. P.C. is controlled by Section 320 Cr. P.C. or it can be

invoked in an appropriate case even if the offences are not compoundable in nature? (2) Whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Cr. P.C. even after the accused was found guilty and convicted by the trial court though the matter is sub judice before the appellate court?”

While dealing with question No.1, this Court in para 15 of the judgment has held as under:- “The refusal to invoke power under Section 320 Cr. P.C., however, does not debar the High Court from resorting to its inherent power under Section 482 Cr. P.C. and pass an appropriate order so as to secure the ends of justice.”

While dealing with question No.2, this Court in paras 16, 17 and 21 of the judgment has held under:- “16 As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 CrPC to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in *Dr.Arvind Barsaul etc. vs. State of Madhya Pradesh & Anr.*, 2008 (2)RCR (Criminal) 910, (2008) 5 SCC 794, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498-A IPC and sentenced to 18 months’ imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that “continuation of criminal proceedings would be an abuse of the process of law” and also by invoking its power under

Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power. 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.

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In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Cr. P.C. after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the

proceedings subject to certain safeguards.”

Since both the parties were convicted by the trial Court and have entered into a compromise, to maintain harmony, peace and good relationship between them, the FIR and subsequent proceedings (in both the cases) are liable to be quashed and judgment passed by the trial Court in both cases are to be set aside.

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.327 dated 28.10.2009 under Sections 323, 324, read with Section 34 (326 added later on) IPC registered at Police Station City Abohar District Ferozepur (now Fazilka) (chargesheeted under Sections 326,323,324 read with Section 34 IPC) (Annexure P1) cross case complaint dated 23.12.2009 registered under Sections 452, 323,504,506 read with Section 34 IPC (charged 323,452,504,506 IPC) along with all the consequential proceedings, arising therefrom, are ordered to be quashed and judgment/order of conviction dated 26.2.2015 passed by the trial Court is also set aside.

(ARVIND SINGH SANGWAN)
JUDGE

July 28,2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No