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

**CRM-M No. 42906 of 2016
Date of Decision: 10.05.2017**

Anil Kumar and others

.....Petitioners

Vs

State of Punjab and another

.....Respondents

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

Present: Mr. Rishu Mahajan, Advocate,
for the petitioners.

Ms. Rimplejeet Kaur, A.A.G., Punjab.

RAJ MOHAN SINGH, J. (oral)

[1]. Prayer in this petition under Section 482 Cr.P.C. is for quashing of FIR No. 47, dated 01.06.2012, under Sections 307/452/427/148/149 I.P.C. and under Sections 25/27/54/59 of the Arms Act, registered at Police Station Kamboj, District Amritsar (Annexure P-1) as well as all the subsequent proceedings arising therefrom on the basis of compromise.

[2]. The FIR was registered with the allegations that accused Jagdish Singh made a *lalkara* that the complainant be not spared. Thereafter, Kabal Singh fired a shot from .12 bore gun at the complainant, but the complainant swiftly sat down and pellets struck in the wall. Thereafter, Jagdish Singh fired again and the pellets hit the complainant's counter. Thereafter, Lovely son of Jagdish Singh fired a bullet from .32 bore revolver, which struck against the milk candy on the shop of the complainant. The accused thereafter entered the shop forcibly and damaged the goods lying there. The complainant started running, in order to save his life and the accused also fired upon the complainant while he was running, but the pellets did not hit him.

[3]. Learned State counsel on instructions from A.S.I. Nirmal Singh stated that after due investigation and enquiry, the case was found to be false and a cancellation report was submitted to the competent Court.

[4]. In view of the facts and circumstances of the case, this Court passed the following order on 01.12.2016:-

“Prayer in this petition is for quashing of the FIR along with all consequential proceedings arising therefrom on the basis of compromise between the parties.

Learned counsel for the petitioners contends that though there is allegation of use of fire arm, but no injury has been caused by the petitioners. He further states that the present case is, in fact, a case of no injury. Even the police has prepared cancellation report.

Notice of motion for 16.03.2017.

Meanwhile, the parties are directed to appear before the illaqa Magistrate/ trial Court for recording their respective statements with regard to compromise/settlement on 19.12.2016. The illaqa Magistrate/trial Court is directed to submit a report on or before the next date of hearing containing the following information as well:

- (i) Number of persons arrayed as accused in FIR;*
- (ii) Whether any accused is proclaimed offender; and,*
- (iii) Whether the compromise is genuine, voluntary, and without any coercion or undue influence.”*

[5]. In pursuance thereof, both the parties have appeared before the Judicial Magistrate Ist Class, Amritsar on 19.12.2016 and their statements have been recorded by the Magistrate 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 Magistrate.

[6]. On 26.04.2017, this Court directed the Magistrate to pass final order in the cancellation report pending before him.

[7]. Now, learned State counsel on instructions from A.S.I. Nirmal Singh has submitted that the Magistrate has declined to accept the cancellation report and has further directed the police to investigate the case.

[8]. 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.”

[9]. 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.

[10]. 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.”

[11]. 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 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.”

[12]. 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.

[13]. 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.

[14]. In view of the compromise, possibility of conviction is very remote and bleak and, therefore, continuation of the criminal proceedings would put the petitioner to a great oppression and prejudice. The complainant would not depose on account of the compromise, therefore, in considered opinion of this Court, quashing of FIR along with entire proceedings, including the order declaring the petitioner to be proclaimed offender on the basis of compromise would definitely advance cause of justice and would achieve ends of justice.

[15]. Resultantly, FIR No. 47, dated 01.06.2012, under Sections 307/452/427/148/149 I.P.C. and under Sections

25/27/54/59 of the Arms Act, registered at Police Station Kamboj, District Amritsar (Annexure P-1) and all the subsequent proceedings arising therefrom are hereby quashed.

**(RAJ MOHAN SINGH)
JUDGE**

**May 10, 2017
Apurva**

Whether Reasoned/Speaking	:	Yes/No
Whether Reportable	:	Yes/No