

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

**CRM-M No. 43863 of 2016
Date of Decision: 13.02.2017**

Gurdian Singh @ Toni

.....Petitioner

Vs

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amrik Singh Kalra, Advocate,
for the petitioner.

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

Mr. S.S. Sodhi, Advocate,
for respondent No. 2.

RAJ MOHAN SINGH, J. (Oral)

[1]. Prayer in this petition is for quashing of FIR No. 40 dated 15.08.1993, registered under Sections 307, 323, 324, 326 and 34 I.P.C. at Police Station Dasuya, District Hoshiarpur (Annexure P-1) and order dated 24.07.2001, declaring the petitioner as proclaimed offender, on the basis of compromise.

[2]. Initially four accused persons were nominated in the aforesaid case, namely Harnarinder Singh, Harvinder Singh @ Laddi, Gurdian Singh @ Toni and Jagjit Singh. Harnarinder Singh and Gurdian Singh @ Toni were declared as proclaimed

offender, whereas remaining two accused persons, namely Harvinder Singh @ Laddi and Jagjit Singh were tried before the competent Court. Harvinder Singh @ Laddi was acquitted, whereas Jagjit Singh was convicted by the trial Court, but in appeal, he was sentenced to undergo till rising of the Court on the basis of compromise between the parties. Thereafter, Harnarinder Singh filed CRM No. 23807-M of 2007 for quashing of FIR on the basis of compromise along with order declaring him proclaimed offender vide dated 06.09.2007. This Court accepted the petition, thereby quashed FIR and other proceedings undertaken in pursuance thereof.

[3]. The petitioner is the second proclaimed offender, who is seeking quashing of FIR on parity basis with that of Harnarinder Singh.

[4]. Vide order dated 07.12.2016, this Court directed the parties to appear before the Chief Judicial Magistrate/ Illaqa Magistrate, Hoshiarpur in the context of recording their statements with regard to genuineness of the compromise in question. Pursuant to the aforesaid order, both the parties have appeared before the Sub Divisional Judicial Magistrate, Dasuya, who has recorded their statements on 11.01.2017. The said Court has also submitted a report, endorsing that the compromise is genuine and is free from any coercion or undue influence.

[5]. 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.”

[6]. Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.)**

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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.

[7]. 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.

[8]. In **Gian Singh vs. State of Punjab and another 2012(4) RCR (CrI.) 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-dominatingly 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 nonhappening of particular event then the offence under Section 307 IPC can be considered for compounding on the basis of compromise.

[11]. In the present case, quashing has already been done in case of co-accused Harnarinder Singh in Criminal Miscellaneous No. 23807-M of 2007, therefore, case of the petitioner has to be considered on the same parameters as that of co-accused Harnarinder Singh, particularly in view of the fact that co-accused Harvinder Singh @ Laddi has since been acquitted and co-accused Jagjit Singh, though convicted by the trial Court, but in appeal he was sentenced to undergo till rising of the Court on the basis of compromise.

[12]. The entirety of the facts and circumstances would spell out attending circumstances in favour of the petitioner, where indulgence of the Court can be exercised in order to meet out the ends of justice.

[13]. This Court is of the opinion that even after setting aside of the order declaring the petitioner to be proclaimed offender, the chances of conviction of the accused-petitioner are remote and minimal. Since both the parties have already amicably resolved their controversy by way of entering into an amicable resolution of dispute, therefore, it would be appropriate to exercise inherent jurisdiction of this Court under Section 482 Cr.P.C. to put an end to the controversy for all times to come. The compromise would facilitate both the parties to live in harmonious and peaceful environment.

[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. Resultantly, impugned FIR No. 40 dated 15.08.1993, registered under

Sections 307, 323, 324, 326 and 34 I.P.C. at Police Station Dasuya, District Hoshiarpur (Annexure P-1) along with entire subsequent proceedings, including order dated 24.07.2001, declaring the petitioner to be proclaimed offender, are hereby quashed.

**(RAJ MOHAN SINGH)
JUDGE**

February 13, 2017
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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No