

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: 08.08.2017

CRM-M -6874-2016

Jai Bhagwan and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CRM-M -6884-2016

Parveen Chawla and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present:

Mr. Shakti Kaushik, Advocate for the petitioners
and for respondents No. 2 to 4
(in CRM-M-6884-2016)
Mr. Naveen Sheoran, Deputy Advocate General,
Haryana
Mr. Jagdeep Singh Rana, Advocate for
Mr. Subham Kaushik, Advocate
(CRM-M -6884-2016) for the petitioners
and for respondents No. 2 and 3
(in CRM-M-6874-2016)

ARVIND SINGH SANGWAN, J.

This order will dispose of above mentioned two petitions i.e. CRM-M-6874-2016 and CRM-M -6884-2016. In both the petitions, filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners are seeking quashing of FIR No. 257 dated 19.8.2009, under Sections 148/149/323/324/506 read with Section 34 of the Indian Penal Code, 1860 ('IPC' for short), registered at Police Station City Tohana, Fatehabad and all consequential proceedings arising therefrom, on the basis of compromise as well as the judgement of conviction/order of sentence dated 2.12.2014/8.12.2014 vide which the trial Court convicted and sentenced the petitioners under Section 323,324 and 506 read with Section 34 IPC . Their appeal is pending in the Court of Sessions.

Vide order dated 24.10.2016, a direction was given to the appellate Court to record the statements of the parties and submit a report regarding the genuineness of the compromise effected between the parties and further to intimate with regard to pendency of PO proceedings against the parties.

In pursuance thereof, the trial Court has submitted a report dated 28.11.2016, after recording the statements of the parties, that the complainant/injured and accused have appeared along with their respective counsel, who had identified them and got their statement recorded acknowledging that the compromise had been effected voluntarily, without any coercion or any undue influence and appellants-convict were never declared proclaimed offenders.

Learned counsel for the petitioners has submitted that it is apparent that the injuries sustained by complainants though reported as

grievous yet was not dangerous to life .

As per the Full Bench judgement 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.

Hon'ble the Apex Court in the case of **Gian Singh vs. State of Punjab and another** 2012 (4) RCR (Crl.) 543, has held as under:-

“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 predominatingly 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.”

As per the Division Bench judgement in **Sube Singh and another Vs. State of H Sube Singh and another Vs. State of Haryana and another** 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 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. 257 dated 19.8.2009, under Sections 148/149/323/324/506 read with Section 34 of IPC, registered at Police Station City Tohana Fatehabad and all the consequential proceedings, arising therefrom, are ordered to be quashed qua the petitioners and the judgment of conviction/order of sentence dated 2.12.2014/8.12.2014 passed by the Sub Divisional Judicial Magistrate Tohana in Criminal case No. 132-1 of 2010 titled as " State vs.Parveen Chawla and others and in Criminal case No. 130-1 of 2010 titled as "State vs. Jai Bhagwan and others" are set aside and the accused are acquitted of the charges.

(ARVIND SINGH SANGWAN)
JUDGE

August 08, 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No