

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-6629 of 2017(O&M)

Date of Decision: May 02, 2017

Gurwinder Singh and othersPetitioners

Versus

State of Punjab and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.KBS Mann, Advocate for the petitioners.

Mr.Neeraj Sharma, Assistant Advocate General, Punjab.

Mr.Nitin Rampal, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.838 dated 19.11.2009, under Sections 324/323/34 of the Indian Penal Code, registered at Police Station Kotwali Bathinda, District Bathinda (Annexure P1), as also for setting aside all the proceedings emanating therefrom including judgment of conviction dated 1.9.2016 (Annexure P2), passed by the learned Chief Judicial Magistrate, Bathinda.

2. Brief facts that would require notice are that the FIR came to be registered on the statement of Gaurav Sharma. Complainant asserted that he was married, and on 18.11.2009, when he was proceeding towards Bibi Wala round about and reached near the house of Raju Sra, MC, the accused

party/present petitioners accosted him and demanded money for taking liquor. The complainant having refused, was given beatings. Thereafter, on the following day i.e. 19.11.2009 at about 9.40 a.m. when the complainant had reached at the shop of a property dealer in connection with some work, the accused party came in a white coloured Zen car and upon alighting therefrom inflicted upon him knife blows as also the kick blows.

3. In pursuance to the registration of the case, challan was filed and the charges were framed against the petitioners. Having faced trial, the petitioners stand convicted vide judgment dated 1.9.2016 passed by the trial Court for offences under Sections 323, 324/34 of the Indian Penal Code. Appeal having been preferred, the same is, concededly, pending adjudication before the Appellate Court.

4. It so transpires that during the pendency of the appeal, the parties have entered into compromise. Pursuantly, even a formal compromise-deed was reduced into writing and the same has been placed on record at Annexure P3.

5. This Court, while issuing notice of motion on 1.3.2017, had directed the parties to put in appearance before the Appellate Court for recording of their statements in support of the compromise.

6. In pursuance to the directions issued by this Court, statements of the complainant/injured Gaurav Sharma, the accused party i.e. the present petitioners as well as intervener Sham Lal (father of the injured) have been duly recorded by the Additional District & Sessions Judge, Bathinda. Placed on record is

a report dated 10.3.2017 of Mr.Lalit Kumar Singla, Additional District & Sessions Judge, Bathinda accompanied by the statements recorded and it has been opined that the compromise has been entered into without any pressure or coercion.

7. Learned counsel for the parties have been heard.

8. The scope of power exercisable by the High Court under Section 482 of the Code of Criminal Procedure came to be considered by the Hon'ble Supreme Court in **Gian Singh v. State of Punjab (2012)4 RCR (Cr.) 543** and it was held that compounding of an offence and quashing of criminal proceedings are two separate things. The extent of the inherent power under Section 482 of the Code of Criminal Procedure as opposed to the power of compounding of offence under Section 320 of Code of Criminal Procedure were held to be distinct and different although ultimate consequence may be the same. It was further held that where the offender and the victim had settled their dispute, the High Court in exercise of its inherent power under Section 482 of the Code of Criminal Procedure is competent to quash the criminal proceedings even relating to non-compoundable offences. A caution, however, was sounded that such power was to be invoked sparingly and not in relation to offences which were heinous or involved mental depravity of the like of murder, rape, dacoity etc.

9. As to whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 of the Code of Criminal Procedure even after the accused has been found guilty and convicted by the trial Court and even though the

matter may be pending in appeal before the Appellate Court came up for consideration before a Division Bench of this Court in **Sube Singh and another v. State of Haryana and another, 2013 (4) RCR (Criminal) 102**. Such question was answered in the affirmative and is in the following terms:

“(16) As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code 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) R.C.R. (Criminal) 910: (2008) 5 SCC 794, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498-A Indian Penal Code 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 Criminal Procedure Code 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 Criminal Procedure Code 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."

10. Adverting back to the facts of the present case, the parties with the intervention of the respectables have buried the hatchet. The occurrence had taken place over a petty issue. Even Mr.Nitin Rampal, learned counsel representing complainant-Gaurav Sharma, respondent No.2 makes a statement at the bar that he would have no objection to the instant petition being allowed in the light of compromise effected.

11. Following the dictum laid down by the Hon'ble Supreme Court in **Gian Singh's** case (supra) and by a Division Bench of this Court in **Sube Singh's** case (supra), the present petition is allowed. The impugned FIR No.838 dated 19.11.2009, under Sections 324/323/34 of the Indian Penal Code, registered at Police Station Kotwali Bathinda and all proceedings emanating therefrom stand quashed qua the present petitioners in the light of the compromise having been arrived at between the parties. As

a necessary corollary, the judgment of conviction dated 1.9.2016 is set aside. Resultantly, the appeal preferred by the petitioners against the judgment of conviction dated 1.9.2016 would be rendered infructuous and shall be so declared by the first Appellate Court, Bathinda.

12. Petition allowed in the same terms.

May 02, 2017

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether speaking/reasoned?* *Yes/No*
 Whether Reportable? *Yes/No*