

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

CRM-M-7287-2017 (O&M)
Date of decision : 26.04.2017

Sukhwinder Singh and others

...Petitioner(s)

Versus

Naib Singh and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Vaishali Singla, Advocate for the petitioner(s).

Ms. Gagandeep Kaur, Advocate for respondent No.1.

Mr. R.S. Nain, AAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of Complaint No.149 dated 29.05.2007 filed under Sections 420, 467, 468, 471 and 120-B IPC and judgment dated 06.06.2014 (Annexure P-2) passed by learned ACJM, Barnala, vide which the petitioners have been convicted and sentence as under:-

<i>Name of convicts</i>	<i>Under Sections</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
Sukhwinder Singh	420 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	467 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	468 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	471 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.

<i>Name of convicts</i>	<i>Under Sections</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
Dalwinder Singh	420 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	467 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	468 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	471 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
Bahadur Singh	420 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	467 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	468 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.
	471 read with Section 120-B IPC	RI for one year	Rs.500	To undergo SI for 10 days.

and all consequential proceedings arising therefrom, on the basis of compromise arrived at between the parties.

Vide order dated 06.03.2017, the parties were directed to appear before the trial Court, for getting their statements recorded. In compliance thereof, report of learned Addl. District and Sessions Judge, Barnala, dated 30.03.2017, has been received, wherein, it has been noticed that the compromise between the parties is genuine, voluntary and reached without any pressure and undue influence.

In ***Narinder Singh and Others Vs. State of Punjab and Another (2014) 6 SCC 466***, it has been observed thus:-

“29. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the

settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.

30. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.

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.”

Hence, in view of the guidelines laid down by Hon'ble the

Supreme Court, this Court is not inclined to quash the proceedings on the

basis of compromise.

However, in view of the guidelines laid down by Hon'ble the Supreme Court, wherein it has been specifically observed that in criminal cases having overwhelming and predominantly civil nature particularly, those arising out of commercial transaction, the possibility of conviction of the accused is remote. Though as per record, petitioners have not undergone any period of sentence, however, keeping in view that the dispute is personal in nature, parties have compromised the matter, fine has been paid, the petitioners have suffered agony of protracted trial as the complaint pertains to the year 2007, this Court feels that these are mitigating circumstances in favour of the petitioners.

Accordingly, keeping in view the aforesaid and in order to maintain harmony reached between the parties, this Court feels that sending the petitioners for serving the jail sentence would not serve any purpose and the fine so deposited by the petitioners meets the ends of justice at this stage. Thus, the petitioners are sentenced to pay fine of Rs.2000/- (each), as ordered by the Courts below.

Ordered accordingly.

26.04.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No