

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16184-2018

Date of decision: 06.09.2018

Gurpinder Singh @ Goldy

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Toor, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

The petitioner has prayed for quashing of FIR No.90 dated 17.06.2004 for the offences punishable under Sections 341, 323, 506, 148, 149 read with Section 34 of the Indian Penal Code ('IPC' for short), registered at Police Station Raikot, District Ludhiana and all the subsequent proceedings arising therefrom, including the order dated 15.02.2010 passed by the trial Court, vide which the petitioner was declared a proclaimed offender, on the basis of compromise effected between the parties.

On 01.08.2018, following order was passed by this Court: -

“Prayer in this petition is for quashing of FIR No. 90 dated 17.06.2004 under Sections 341/323/506/148/149 read with Section 34 IPC, registered at Police Station Raikot, District Ludhiana and all the subsequent proceedings arising therefrom

as well as the order dated 15.02.2010 (Annexure P4) vide which the petitioner was declared a proclaimed offender, on the basis of compromise dated 16.03.2018 (Annexure P2) effected between the parties and also in view of the judgment of acquittal dated 01.11.2010 (Annexure P3) vide which the co-accused of the petitioner, after facing full length trial, were acquitted by the trial Court.

Counsel for the petitioner submits that the petitioner is residing in USA for the last about more than 09 years and is permanently settled there. He further submits that at that time when the trial was going on, the petitioner absented from the Court proceedings and later on, he was declared a proclaimed offender as he had gone abroad. Counsel further submits that the applicant, for getting permanent residency, is not in a position to come back to India and appear before the trial Court. Counsel further submits that during intervening period, the other co-accused have already been acquitted by the trial Court vide its judgment dated 01.11.2010 and even the complainant has now compromised the matter with the petitioner vide compromise deed dated 16.03.2018 (Annexure P2).

Counsel for the petitioner has relied upon judgment of Hon'ble Division Bench titled as Sudo Mandal @ Diwarak Mandal vs. State of Punjab, 2011 (2) RCR (Crl.) 453, wherein

it is held that if the co-accused, who faced the trial, stands acquitted, no purpose will be served to put the petitioner on trial and quashed the FIR.

Parties are directed to appear before the trial Court/successor Court for recording their statements within a period of two weeks from today.

Liberty is granted to the petitioner to appear before the trial Court, through his attorney, for recording the statement with regard to compromise.

Report of the trial Court be awaited for 06.09.2018.

However, it is made clear that recording of statements shall be subject to deposit of costs of Rs.2 lacs by the petitioner in the Government Treasury under the head to be nominated by the trial Court.”

The parties, in pursuance of the aforesaid order, have appeared before the trial Court and the trial Court has submitted a report dated 28.08.2018 that the petitioner through his power of attorney-Daljit Singh as well as complainant Ved Parkash have appeared before the trial Court and they have recorded their respective statements that the matter has been compromised between the parties.

In the statement of complainant Ved Parkash, it is stated that he has compromised the matter with accused Gurbinder Singh @ Goldy with the intervention of respectables of the village. He has compromised the matter voluntarily, without any pressure from any person and he has no

objection in case present FIR is quashed.

The trial Court has also submitted a report that petitioner has deposited the costs of Rs.2.00 lacs in the Govt. Treasury on 09.08.2018.

Learned counsel for the petitioner submits that no other criminal case is pending between the parties and the petitioner is not a proclaimed offender.

Learned State counsel, on instructions from the Investigating Officer, has not disputed the fact that the parties have arrived at a settlement with an intent to give burial to their differences.

I have heard learned counsel for the parties and perused the case file.

As per the Full Bench judgment of this Court in **Kulwinder Singh and others Vs. State of Punjab, 2007 (3) RCR (Criminal) 1052**, it is held that the 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 feel that the same was required to prevent the abuse of the process of law or otherwise to 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 (Criminal) 543**, has held as under:-

“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.”

In view of the report submitted by the trial Court and considering the fact that other co-accused, who have faced the full length trial, stand acquitted vide judgment dated 01.11.2010 (Annexure P-3), no useful purpose would be served in sending the petitioner for facing the trial in view of judgment of Division Bench in **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) RCR (Crl.) 453.**

In view of what has been discussed hereinabove, present petition is allowed and FIR No.90 dated 17.06.2004 under Sections 341, 323, 506, 148, 149 read with Section 34 IPC, registered at Police Station Raikot, District Ludhiana as well as the order dated 15.02.2010 (Annexure P-4) passed by the trial Court, declaring the petitioner a proclaimed offender and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

[ARVIND SINGH SANGWAN]
JUDGE

06.09.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No