

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

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CRM-M-19636-2018

Date of decision : 01.08.2018

VIKAS GUPTA

... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Kamal Sehgal, Advocate for the petitioner.

Mr. Surinder Singh, AAG, Haryana.

Mr. Shailendra Sharma, Advocate for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.213 dated 11.06.2016 registered under Section 420 of the Indian Penal Code read with section 120-B of the Indian Penal Code (for short 'the IPC'), at Police Station Sector 40, Gurugram and quashing of FIR No.138 dated 09.04.2018 registered under Section 174-A of the IPC in Police Station Sector 40, Gurugram (Annexures P/1 and P-6) and all consequential proceedings arising therefrom, on the basis of compromise dated 29.09.2017 (Annexure P-2) arrived at between the parties.

Vide order dated 09.05.2018, the parties were directed to appear

before the learned trial Court/Illaq Magistrate, for getting their statements

recorded; as to the genuineness of the compromise. In compliance thereof, report of Judicial Magistrate Ist Class, Gurugram, dated 13.06.2018, has been received, wherein, it has been noticed that the parties have settled the dispute amicably without any undue influence, coercion or pressure and none of the accused have been declared as proclaimed offender.

The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.

However, more often than not the civil disputes or inter-se conflicts of two parties transform themselves into criminal aspect.

Therefore, the legal system plays a role to resolve the conflict between two

parties; with the added task of ensuring that the adverse impact of dispute qua society at large is minimized. But still the core idea is to resolve the conflict between two sides by putting it to rest. Therefore, even the criminal law is required to give due regard to the wishes of the parties to dispute. Recognizing this principle only, the Indian legal System also provides for recognizing the compromise between two sides of a criminal dispute. Section 320 Cr.P.C. is an express provision in this regard. This section not only provides for compounding during the trial, but permits compounding even at appellate or revisional stage. However by its very nature and scope, Section 320 Cr.P.C. cannot be the sole repository; wherein the recognition to a compromise between the parties have; necessarily; to be confined. This section relates only to the offences prescribed under the Indian Penal Code. There are a lot more offences prescribed outside IPC. Even to the offences existing in the IPC new dimensions are added from time to time, making the existing offences to be lighter or stringent and even new modalities of proof of offences are being recognised in view of technological advancement. This necessitates and requires the need for looking beyond Section 320 Cr.P.C. to recognise the compromise between the parties to dispute. But to maintain the sanctity of the procedure prescribed for criminal trial; the Trial Court cannot be permitted to travel beyond the scope prescribed under that procedure. Hence the need for invoking Section 482 Cr.P.C. by the High

Court.

But, as observed above, the wishes of only parties to the criminal dispute would not always be sufficient to terminate a criminal trial in view of the patent, latent or subtle effect; their conduct would have left qua the society at large. Therefore the offences committed by persons involved in governance or administration for acquiring official power or while exercising office power cannot be permitted to be compromised. Likewise, even the offences involving only two private persons, but reflecting depravity of character or involving causing intentional loss of life or causing intentional loss of property by extending imminent threat of loss of life; cannot be permitted to be compromised. Except the above-mentioned grave offences, there is every reason that all other offences should be permitted to be compromised by the Court. Since the proof of offences before the Court, again would involve the conduct of the parties to dispute, therefore if the Court does not permit the same to be compromised then the parties would tend to play tricks upon the Court to ensure the acquittal of accused by subverting the administration of criminal justice. And it is never in the interest of administration of criminal justice to force the citizen to learn and adopt the tricks designed to be played upon Courts to subvert the justice system. So it would always be in the interest of justice itself; that the compromise between the parties is recognized and the citizen

remain moored and committed to the essentials of the system of administration of justice, at least, qua those offences, which the interest of society does not permit to be compromised.

Hon'ble the Supreme Court has amply clarified the legal position on recognizing compromising in the case of ***Gian Singh Vs. State of Punjab and another, 2012(4) RCR (Criminal) 543***, and has observed 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.”

The present case does not fall in anyone of the exceptions envisaged above. Hence, in view of the report of Judicial Magistrate Ist Class, Gurugram, dated 13.06.2018 made in pursuance of the order dated 09.05.2018 passed by this Court, the Court feels that no useful purpose would be served by keeping the proceedings alive. It will be in the interest of justice, if the settlement reached between the parties is accepted.

Although, the main FIR No.213 dated 11.06.2016 registered under Section 420 read with Section 120-B of the IPC is sought to be quashed on the basis of compromise, however, another FIR No.138 dated 09.04.2018 under Section 174-A IPC is also under challenge.

The learned counsel for the petitioner has relied upon the decisions of this Court in YADWINDER SINGH @ YADA VS. STATE OF PUNJAB AND ORS (P&H) CRM NO.43607 OF 2015 decided on February 14, 2018; MICROQUAL TECHNO LIMITED AND OTHERS VS. STATE OF HARYANA & ANOTHER (P&H) CRM No.43210 of 2014 decided on September 14, 2015 ; CRM-M-32493-2017 decided on 06.11.2017 and that of Delhi High Court in NOOR SALIM RANA & ORS VS. STATE (GOVT) OF NCT OF DELHI) & ANR CRL.M.C.

1695/2015 DECIDED ON JANUARY 22, 2016 to contend that once the

main FIR is compromised between the parties, then the FIR registered under Section 174-A of the IPC can also be compromised and continuation of the same would be an abuse of the process of the Court.

The learned counsel for the petitioner has further argued that ; otherwise also the petitioner was wrongly declared as proclaimed offender and thereafter the petitioner had appeared before the Court. The petitioner had approached the Court of learned Additional Sessions Judge, Gurugram and that Court had granted him interim bail with a direction to appear before the Investigating Officer. Thereafter, he joined the proceedings and was ultimately granted bail by the trial Court. Therefore, it is submitted that even the FIR under Section 174-A of the IPC has even been rendered in-effective in law.

On the other hand, the learned State counsel has cited three judgments titled as **Gurpreet Singh vs. State of Punjab and another reported in Law Finder DOC Id #690104 ; Maneesh Goomer vs. State (Delhi) 2013(6) R.C.R. (Criminal) 2736 and CRL.M.C. 3683/2016 titled as Pradeep Kumar Sehdev vs. The State (Govt. of NCT of Delhi) & Anr. Decided on 30.09.2016** to contend that despite the fact that the main FIR itself has been compromised between the parties, subsequent FIR registered under Section 174-A of the IPC cannot be quashed on the basis of compromise.

Having heard the counsel for the parties on this point and perusing the records, this Court is of the considered view that the objective of the coercive mechanism prescribed the provisions of the Code of Criminal Procedure for declaring an accused as proclaimed person is mainly to ensure that the person remains present before the Court to face the trial and to receive the punishment for his alleged conduct, which has constituted the offence. If the person has appeared before the Court, even after he was declared as proclaimed person or is granted bail by the Court after such declaration then the object of the procedure prescribed under the Code of Criminal Procedure stands achieved. Therefore, if after declaring an accused a proclaimed person, he has started facing trial and has not defaulted again thereafter, and further the offences under the main FIR are compromised, then, the Court can take lenient view to quash the FIR under Section 174-A of the IPC as well. However, this would be required to be considered with reference to the facts and circumstances of each case, depending upon nature and duration of the default and also the subsequent conduct of such accused.

Having heard learned counsel for the parties on the point of quashing of Section 174-A of the IPC on the basis of compromise, this Court is of the considered opinion that Section 174-A of the IPC is an offence against the administration of justice. Therefore, the offence under

Section 174-A of the IPC do not have any character of personal nature.

Since the offence under Section 174-A of the IPC is against the system of administration of justice, therefore, the offence under Section 174-A of the IPC cannot be quashed only on the ground that the offences mentioned in the main FIR, in which the person had absented; resulting into FIR registered under Section 174-A of the IPC, has been compromised between the parties.

In the present case, as is borne out from the record, the main FIR under Section 420 of the IPC was registered on 11.6.2016. For the first time, the police had given him a notice under Section 41-A of the Cr.P.C. on 3.5.2017. However, the petitioner did not appear before the prosecuting agency, which led to issuance of arrest warrant of the present petitioner. Since the warrants of arrest cannot be executed as such, the proceedings under Section 82 Cr.P.C. were initiated. Under those proceedings, as seen from the record, the proclamation notice was served on 24.01.2018. On his default in appearance, the petitioner was declared as proclaimed person on 26.02.2018. However, immediately thereafter, the petitioner had approached the Court of Additional Sessions Judge, Gurugram for protecting him against the arrest. That Court granted interim protection to the petitioner vide order dated 13.03.2018. After getting the protection from the Court, the petitioner appeared before the investigating

officer, joined the investigation and thereafter the interim protection granted by the learned Additional Sessions Judge, was confirmed vide order dated 10.04.2018. However, before that on 09.04.2018 when the petitioner had gone to join the investigation in the main case, the investigating officer arrested him for the offence under Section 174-A of the IPC and the petitioner was produced before the Court on 10.04.2018. The trial Court released him on bail pending trial. This completes the process so far as the appearance of the petitioner before the Court is concerned. On 10.04.2018, he was granted anticipatory bail in the main case and he was granted regular bail for the offence under Section 174-A of the IPC. After that the petitioner had not absented from the Court till date. Hence, it is clear that the object of coercive measures which was enforced against the petitioner stands duly achieved. The Trial Court had even granted regular bail to the petitioner for the offence under Section 174-A of the IPC.

In view of these facts and circumstances, this Court feels that since the main FIR has already been compromised between the parties and is not going to proceed further, therefore, it would not be justified to make the petitioner to face trial only for an offence under Section 174-A of the IPC. Therefore, even the FIR No.138 dated 09.04.2018, which pertains to offence under Section 174-A of the IPC deserves to be quashed.

Accordingly, the present petition is allowed. FIR No.213 dated

11.06.2016 registered under Section 420 read with Section 120-B of the IPC, at Police Station Sector 40, Gurugram and quashing of FIR No.138 dated 09.04.2018 registered under Section 174-A of the IPC in Police Station Sector 40, Gurugram (Annexures P/1 and P-6) and all consequential proceedings arising therefrom, on the basis of compromise dated 29.09.2017 (Annexure P-2) arrived at between the parties are hereby quashed qua the present petitioner.

(RAJBIR SEHRAWAT)
JUDGE

01.08.2018

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Whether speaking / reasoned : Yes No

Whether Reportable : Yes No