

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

Date of Decision: 14.2.2018

1. CRM-M No.43607 of 2015

Yadwinder Singh @ YadaPetitioner

Vs

State of Punjab and othersRespondents

2. CRM-M No.15606 of 2016

Yadwinder Singh @ YadaPetitioner

Vs

State of Punjab and othersRespondents

3. CRM-M No.981 of 2018

Yadwinder Singh @ YadaPetitioner

Vs

State of PunjabRespondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.D.S.Pheruman, Advocate for the petitioner.

Mr.Hittan Nehra, DAG, Punjab
in CRM-M No.43607 of 2015 and
CRM-M No.15606 of 2016

Mr.Sandeep Kumar, D.A.G., Punjab
in CRM-M No.981 of 2018

Mr.Avtar Bhathi , Advocate and
Mr.Vivek Sharma Bhanot, Advocate
for respondent Nos.2 and3.

RAJ MOHAN SINGH, J. (Oral)

Vide this common order, all the aforesaid cases are being disposed of.

CRM-M No. 43607 of 2015 is in respect of quashing of FIR No.200 dated 8.10.2013 under Sections 307/34 IPC and Sections 25/27/54/59 of the Arms Act registered at Police Station Patti District Tarn Taran on the basis of compromise.

CRM-M No.15606 of 2016 is in respect of quashing of FIR No.285 dated 27.10.2014 registered under Section 174-A IPC at Police Station Patti District Taran Taran.

CRM-M No. 981 of 2018 is in respect of grant of regular bail in FIR No.200 dated 8.10.2013 under Sections 307/34 IPC and Section 25 of the Arms Act registered at Police Station Patti District Tarn Taran.

The common facts are being noticed for disposal of the aforesaid cases.

Complainant Kulwant Kaur lodged FIR No.200 dated 8.10.2013 under Sections 307/34 IPC and Sections 25/27/54/59 of the Arms Act at Police Station Patti District Tarn Taran with the allegations that her husband was working as a property dealer. On 8.10.2013, husband of the complainant had gone out for his work in his vehicle. At about 6.15 p.m. complainant heard

some noise of fire shot near her house. She immediately rushed to the spot and found that her husband was lying in a pool of blood. Her husband disclosed that Yada son of Depa and brother-in-law of Sabba had inflicted gun shot injury to him. Thereafter, he became unconscious and was shifted to the hospital. Petitioner was found to be juvenile during course of investigation and it was also found that co-accused Rasal Singh fired at the husband of the complainant. Only a *lalkara* was attributed to the petitioner.

On 28.9.2015, a compromise was effected between the parties, which was duly signed by the complainant and injured on one side and also by father of the petitioner, namely, Baldev Singh and witnesses, namely, Gurcharan Singh, Hakumat Rai and Jaspal Singh. Complainant Kulwant Kaur and injured Satnam Singh also executed their affidavits dated 29.9.2015 in token of the compromise.

Petitioner was declared to be proclaimed offender on 27.3.2014 and thereafter, arrested in the present case. In respect of status of the petitioner being proclaimed offender, separate FIR bearing No.285 dated 27.10.2014 under Section 174-A IPC at Police Station Patti District Taran Taran came to be registered. Petitioner was attributed a *lalkara*, whereas, co-accused Rasal Singh opened fire at the husband of the

complainant. Now the parties have compromised.

Learned counsel for the petitioner by referring to **Jayrajsingh Digvijaysingh Rana Vs. State of Gujarat and another, 2012 (4) R.C.R. (Criminal) 589** and **Parambir Singh Gill Vs. Malkiat Kaur, 2010 (1) R.C.R. (Criminal) 256** and decision rendered by this Court in **CRM-M No. 18632 of 2014 titled Ashok Kumar Garg and another vs. State of Punjab and others** decided on 7.8.2015, submits that criminal proceedings in the FIR can be quashed at the instance of one of the accused on the basis of compromise.

The extent and sweep of inherent powers of the HighCourt under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in **Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47**, **Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604** and **State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489**, has summed up the controversy in **State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and others, 2003(2) RCR (Crl.) 860 (SC)**. The legal position summed up in the said judgment is in the following

manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the

statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an

abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.”

Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.)**

1052 considered the scope of powers under Section 482

Cr.P.C., to hold that High Court has powers to quash prosecution

in order to achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised Ex-Debitia, justitia to prevent abuse of process of Court.

In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of commercial, financial, mercantile and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise.

In **Gian Singh vs. State of Punjab and another** **2012(4) RCR (Crl.) 543**, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in the following manner:-

“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 pre-dominantly 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 quashing of criminal proceedings in an offence under Section 307 IPC came up for detailed discussion before the Hon'ble Supreme Court in ***Narinder Singh and others vs. State of Punjab and another, 2014(2) RCR (Crl.) 482***. After due consideration the Hon'ble Apex Court formalised the issue of compounding of offences under Section 307 IPC to say that it is an offence against society and is non-compoundable, but in certain cases the High Court would be guided to give adequate treatment to the settlement between the parties in exercise of inherent powers under Section 482 Cr.P.C. Following principles were laid down in para 31 of the judgment:-

“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.”

Taking into consideration totality of facts and circumstances, this Court is of the view that the case can be considered for quashing of FIR along with subsequent proceedings arising therefrom on the basis of compromise.

Resultantly, FIR No.200 dated 8.10.2013 under Sections 307/34 IPC and Sections 25/27/54/59 of the Arms Act registered at Police Station Patti District Tarn Taran as well as all the subsequent proceedings arising therefrom are hereby

quashed qua the petitioner.

Since, the main FIR is quashed on the basis of compromise, therefore FIR No.285 dated 27.10.2014 registered under Section 174-A IPC at Police Station Patti District Taran Taran is also quashed qua the petitioner for the reasons recorded hereinabove.

As a result of the aforesaid findings, CRM-M No.981 of 2018 has become infructuous. Accused be released, if he is not involved in any other case.

All the petitions stand disposed of accordingly.

February 14, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No