

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

**CRM-M No.48069 of 2017
Decided on: 23.05.2018**

Puran Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. M.S. Kathuria, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of impugned orders dated 03.10.2016 and 03.06.2017 (Annexures P5 and P8, respectively) passed by the trial Court, vide which, the untraced report in FIR No. 57 dated 13.02.1997 under Sections 457, 380, 427, 506, 148 and 149 of the Indian Penal Code (in short 'IPC'), Police Station Civil Sadar, Ludhiana (Annexure P1), filed by the Investigating Officer twice, has not been accepted by the Magistrate.

Brief facts of the case are that respondent No.2 – Mohan Singh got the aforesaid FIR registered against the petitioner with the allegations that he has a plot of 400 sq. yds., which he has purchased from the colonizer vide sale deed dated 14.08.1996 and a room as well as the boundary wall was constructed at the spot and the possession was taken by the complainant. One Hira Singh son of Gurbachan Singh tried

to take possession of the common vacant land, which was objected by the complainant and on that account, when he was sitting with his family, one Jaswant Singh came and informed that Hira Singh and others are taking possession of the plot. When he reached at the spot, he saw that the room was demolished by the accused persons and on protest, they gave beatings to him.

The petitioner had filed CRM-M No.28874 of 2015 praying for quashing of the aforesaid FIR and on 28.08.2015, the following order was passed by this Court:-

“Quashing of FIR registered in the year 1997, on the basis of compromise with the complainant, has been prayed for. It has been stated at Bar that the challan has not yet been presented. It has also been submitted that neither the petitioner nor any of other co-accused named in the FIR is a proclaimed offender.

Notice of motion to the Advocate General, Punjab.

On asking of the Court, notice has been accepted by Mr.Jashan Preet Singh, AAG., Punjab, present in the Court Copy given.

In view of above said circumstances, this petition is disposed of with a direction that the Investigating Officer will record the supplementary statement of the complainant on the basis of the compromise Annexure P3 and would take necessary steps either to file cancellation report or to proceed in accordance with law as deemed appropriate.”

It is relevant to note that on 26.07.2016, the trial Court has also recorded the statement of the complainant that he agrees with the untraced report submitted by the police as the compromise has been effected between the parties and he has no objection if the FIR is

cancelled against the accused persons.

Thereafter, the trial Court vide order dated 03.10.2016, refused to accept the untraced report on the basis of the compromise and the petitioner, thereafter, filed another application i.e. CRM No.37674 of 2015 in CRM-M No.28874 of 2015, in which the following order was passed by this Court on 22.10.2016:-

“The learned State counsel informs that untraced report in the matter has been filed on 26.07.2016, wherein complainant-Mohan Singh has made a statement that he does not wish to pursue the matter; he agrees with the untraced report; and the compromise has been effected between the parties. On the statement made by learned State counsel, the learned counsel for the petitioner seeks to withdraw the present application.

Dismissed as withdrawn.

The proceedings be finalised by the Courts below expeditiously.”

Thereafter, the petitioner filed the present petition and on 20.12.2017, while issuing notice of motion, it was observed that report of the concerned Judicial Magistrate 1st Class, Ludhiana be called as to why and in what circumstances, she is remanding the case to the police authorities for re-investigation time and again, when untraced report has already been filed twice and the complainant has made a specific statement dated 05.04.2017 (Annexure P-7) for acceptance of the same inasmuch as the said act of the concerned Magistrate, amounts to sheer harassment to the petitioner and abuse of the process of law.

In pursuance to the said order, again a report has been submitted by the Judicial Magistrate 1st Class, Ludhiana, which is

reproduced as below:-

“With reference to order dated 20.12.2017 passed by Hon'ble Mr. Justice Ramendra Jain, Judge, Hon'ble Punjab and Haryana High Court in CRM-M-48069-2017 titled as Puran Singh vs State of Punjab and another ”, it is respectfully submitted that the untraced report in FIR No.57, dated 13.02.1997 under Sections 457, 380, 427, 506, 148 and 149 of IPC was presented for the first time on 26.07.2016 and on the same date, complainant Mohan Singh had suffered statement agreeing with the same and further stating that compromise has been effected between him and accused persons. However, the FIR in this case was registered against the accused persons by name, therefore, untraced report was not accepted in this case. Secondly, offences under Sections 427, 506 and 149 of IPC are compoundable, however, offences under Section 457, 380, 148 of IPC are non-compoundable. Therefore, the untraced report was not accepted on the basis of compromise and accordingly, same was returned to Investigating Officer vide order dated 03.10.2016. However, the parties were given liberty to approach the appropriate forum for availing the appropriate remedy, if so advised.

Thereafter, one of the accused Puran Singh approached the Hon'ble Punjab and Haryana High Court wherein the learned State Counsel informed that the untraced report has been filed in the matter on 26.07.2016 to which complainant Mohan Singh had agreed and suffered statement to that effect. On the statement made by learned State counsel, the counsel for accused Puran Singh withdrew the application under Section 482 of Cr.P.C. and the Hon'ble High Court vide its order dated 22.10.2016 dismissed the said petition as withdrawn.

Thereafter, untraced report was again presented in

this case on 16.02.2017 and on 05.04.2017, complainant again suffered statement to the effect that he has compromised the matter with the accused and he agrees with the untraced report and has no objection, if the same is accepted.

However, from the perusal of the order dated 22.10.2016 passed by the Hon'ble High Court, it was amply clear that nothing was informed about the fact that the untraced report presented on 26.07.2016 was not accepted and same was already returned by this court on 03.10.2016. The second untraced report was filed on the same lines on which the first untraced report was filed. No new facts came on record. Therefore, in view of the reasons as already cited in the order 03.10.2016, the second untraced report was also not accepted and the same was returned to the Investigating Officer.

The copies of the orders dated 03.10.2016 and 03.06.2017 are attached herewith for the kind perusal of His Lordship.

Submitted please.

Yours faithfully,

*(Ekta)
(Unique Identity Code: PB 0463)
Judicial Magistrate Ist Class,
Ludhiana.”*

A perusal of the report shows that neither any explanation has been given nor any cogent reasons are assigned as to why repeatedly the untraced report submitted by the police, after recording the statement of the complainant with no objection, is being rejected by the concerned Magistrate.

Learned counsel for the petitioner has further argued that

the trial Court has not adopted the correct approach while passing the impugned order dated 03.10.2016 by observing that since the offences under Sections 457, 380 and 148 IPC were non-compoundable, the untraced report cannot be accepted on the basis of the compromise.

Counsel for the petitioner has submitted that this observation of the trial Court is illegal and prayer for setting-aside the impugned order. The learned counsel has further submitted that as per the Full Bench judgment of this Court in ***“Kulwinder Singh and others vs. State of Punjab”***, 2007 (3) RCR (Criminal) 1052, where it has been held that the High Court has power under Section 482 Cr.P.C. to quash the prosecution even in non-compoundable offence where the High Court feel that the same is required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice, the impugned FIR be quashed on the basis of the compromise.

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:-

“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.”

Coming on the merits of the case, counsel for the petitioner has submitted that once the police has submitted the untraced report and the complainant/respondent No.2, namely, Mohan Singh has suffered a statement before the trial Court that in terms of the compromise effected between the parties, as is clear in the order dated 26.07.2016 (Annexure P4), he has no objection if the untraced report is accepted by the trial Court, the impugned order be set-aside by accepting the untraced report and the FIR be quashed.

Learned State counsel has also drawn attention to the order dated 28.08.2015 (Annexure P3) passed by the Coordinate Bench in an earlier petition, filed by the petitioner i.e. CRM-M No.28874 of 2015 praying for quashing of the FIR, on the basis of the compromise.

As per this order, this Court had disposed of the aforesaid petition with a direction to the Investigating Officer to record a supplementary statement of the complainant and take necessary steps either to file a cancellation report or to proceed in accordance with law as deemed appropriate. It is thus, submitted that after recording the statement of the complainant, who has acknowledged the compromise, the police has again submitted the untraced report, however, the same was rejected by the trial Court as noticed above.

In view of the same, this petition is allowed as the offences under Sections 457, 380, 427, 506, 148 and 149 IPC falls in the category of the offences which can be compounded in terms of the Full Bench judgment of this Court in *Kulwinder Singh's case (Supra)* and of the Hon'ble Supreme Court in *Gian Singh's Case (Supra)*.

Accordingly, the FIR No. 57 dated 13.02.1997 (Annexure P1) under Sections 457, 380, 427, 506, 148 and 149 of IPC, Police Station Civil Sadar, Ludhiana and the impugned orders dated 03.10.2016 and 03.06.2017 (Annexures P5 and P8, respectively), passed by the trial Court and the further proceedings qua the petitioner are hereby quashed.

(ARVIND SINGH SANGWAN)
JUDGE

23.05.2018
yakub

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