

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

CrI. Misc. No. M-5024 of 2018 (O&M)

Date of decision: September 12, 2018

Puranpal Singh

.. Petitioners

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.S. Sidhu, Advocate
for the petitioners.

Mr. Ramandeep S. Sandhu, Sr. DAG Punjab.

Mr. D.S. Sidhu, Advocate
for respondent No.2.

SURINDER GUPTA, J.(Oral)

The petitioners have filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of FIR No.218 dated 24.11.2015 (Annexure P-1), registered for offences punishable under Sections 435, 427, 188 of Indian Penal Code (for short 'IPC') at Police Station Sadar Fazilka, and judgment of conviction dated 23.05.2017 passed by Additional Chief Judicial Magistrate, Fazilka convicting him for the offence punishable under Section 435 IPC, along with all consequential proceedings arising therefrom, on the basis of the compromise dated 16.01.2018 (Annexure P-4).

Report of Additional Chief Judicial Magistrate dated 16.04.2018 has been received, wherein it has been stated that the parties have compromised the matter with their free will, without any pressure,

inducement or influence. The compromise was also found to be voluntary and genuine.

As per case of the prosecution, complainant Harvinder Singh along with his brother was cultivating 33 acres of land out of which 18 acres of land was owned by them, while 15 acres of land was taken on lease. They had sown sugarcane crop in land bearing Rect. No.72 Killa No.13(8-0), which was adjoining land of petitioner, who had sown and harvested paddy crop over his land. The petitioner had put the stubble in his field on fire which also burnt the sugarcane crop on the land of complainant causing him loss of ₹1,50,000/- to ₹2,00,000/-.

Learned trial Court convicted the petitioner under Section 435 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of ₹5000/-. Against his conviction, he filed appeal which is pending before the Additional Sessions Judge, Fazilka.

The only question which arise for consideration in this petition is whether the FIR can be quashed after conviction of an accused, during the pendency of the appeal. To find the answer to the above query, reference may be made to the observations in case of ***Sube Singh Vs. State of Haryana 2013 (4) R.C.R. (Criminal) 102***, wherein Division Bench of this Court took the following questions for determination:

“(1) Whether the power exercisable by the High Court under Section 482 Cr.P.C. is controlled by Section 320 Cr.P.C. or it can be invoked in an appropriate case even if the offences are not compoundable in nature?

(2) Whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. even after the accused was found guilty and

convicted by the trial court though the matter is *sub judice* before the appellate court?

While answering question No.2, it was observed by Hon'ble Division Bench in para 17 of the judgment as follows:-

“(17) The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Cr.P.C. with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non-compoundable offences notwithstanding the bar under Section 320 Cr.P.C. but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.”

Similar question arose before a Co-ordinate Bench in case of ***Baghel Singh Vs. State of Punjab 2014(3) RCR (Criminal) 578***, wherein it was observed as follows:-

“6. This Court in authorities reported as ***Lal Chand v. State of Haryana, 2009 (5) RCR (Criminal) 838*** and ***Chhota Singh v. State of Punjab, 1997(2) RCR (Criminal) 392***, allowed the compounding of offence in respect of offence under Section 326 I.P.C. at the Appellate stage, where the Court came to the conclusion that it will be a starting point in maintaining peace between the parties.”

Other Co-ordinate Bench of this Court also took similar view in case ***Balbir Singh and others Vs. State of Punjab and another (CRM-M-3991-2015 decided on 29.04.2015)*** and ***Surender and another Vs. State of Haryana and another (CRM-M-43225 of 2016 decided on 04.04.2018)*** and allowed quashing of FIR on the basis of compromise after conviction.

In case of ***Gian Singh Vs. State of Punjab and Ors 2012 (10) SCC 303***, Hon'ble Apex Court while discussing the scope and extent of inherent powers of High Court in quashing the criminal proceedings, has observed as follows:-

“48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable Under Section 320 of the Code.

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be

exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power Under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court Under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.”

Adverting to the facts of the case, parties have mutually settled their dispute. Keeping all the above facts in view, I am of the considered opinion that it is a fit case in which the impugned FIR should be quashed. Keeping the case pending will not serve the ends of justice. The quashing of the FIR will provide the parties to this petition an opportunity to live in an amicable, peaceful and harmonious atmosphere which is not only in the interest of the parties but also for their families and ultimately the society at large.

For the reasons as discussed above, the instant petition is allowed and the impugned FIR No.218 dated 24.11.2015 (Annexure P-1), registered for offences punishable under Sections 435, 427, 188 of Indian Penal Code (for short 'IPC') at Police Station Sadar Fazilka, and judgment of conviction dated 23.05.2017 passed by Additional Chief Judicial Magistrate, Fazilka convicting him for the offence punishable under Section 435 IPC, along with all consequential proceedings arising therefrom, qua petitioner, are quashed.

(SURINDER GUPTA)
JUDGE

September 12, 2018

Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No