IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1241-2017 (O&M)

Date of decision: 30.08.2018

M/s Vishal Poultry Farm and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sunil K. Nehra, Advocate
for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Mandeep Singh, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

Challenge has been laid to the order dated 7.1.2017 passed by learned District & Sessions Judge, Ambala whereby dismissing the appeal filed by the petitioners against judgment of conviction dated 11.8.2014 and order of sentence dated 14.8.2014, passed by the Judicial Magistrate, 1st Class, Ambala, whereby the petitioners have been convicted and sentenced in complaint case No.1015 of 2011 as under :-

Name	Under Sections	Sentence	Fine	In default of payment of fine
Vishal Malhotra	138 of Negotiable Instruments Act	Rigorous imprisonment for two years	Rs. 10,000/-	Rigorous imprisonment for one month

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Now compromise has been effected between the parties. Vide order dated 27.04.2018, the parties were directed to appear before the trial court/Illaqa Magistrate to get their statements recorded with regard to genuineness of compromise.

Pursuant thereto, a report has been submitted by the Judicial Judicial Magistrate, 1st Class, Ambala wherein it has been reported statements of the parties have been recorded and compromise entered between the parties without any pressure, undue influence or coercion of anyone. The same is genuine and voluntary.

In recent judgment in case titled as **Smt. Anita Maria Dias and another Vs. State of Maharashtra and another 2018 (1) R.C.R. (Criminal) 983**, Hon'ble the Supreme Court has observed in para Nos.6 and 7, as under:-

> "6) Insofar as first reason given by the High Court is concerned, learned counsel appearing for respondent No. 2 made a categorical statement before us on instructions from respondent No. 2 that he has, in fact, settled the matter on terms which are being taken note of above. He has further stated that respondent No. 2 has no objection if the proceedings arising out of the aforesaid FIR are quashed. We find that the matter is settled by the complainant out of his free will.
>
> 7) In a case like this, where the proceedings are still at initial and nascent stage, the High Court should have exercised its discretion in quashing the proceedings. Law in this behalf is well settled by catena of judgments of this Court including **Parbatbhai Aahir & Ors. v. State of Gujarat & Anr., 2017(4) R.C.R (Criminal) 523 : 2017 (5) Recent Apex Judgments (R.A.J.) 462 : (2017) 9 SCC 641** and **Gian Singh v. State of Punjab & Anr., 2012 (4) R.C.R. (Criminal) 543 : 2012 (4) Recent Apex Judgments (R.A.J.) 549 : (2012) 10 SCC 303.** We may also quote the following passage from the case of **Narinder Singh & Ors. v. State of Punjab & Anr.,**

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2014 (2) R.C.R (Criminal) 482 : 2014 (2) Recent Apex Judgments (R.A.J.) 621 : (2014) 6 SCC 466 :

"29. 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:

29.1. 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.

29.2. 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.

29.3. 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 the 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.

29.4 On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed

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when the parties have resolved their entire disputes among themselves.

29.5. 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.

29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are 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 latter 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.

29.7 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

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> *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 to 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."*

In *Sube Singh versus State of Haryana*, a Division Bench of this court has already discussed the matter where parties arrived at a compromise at appellate stage. In that case, appeal against conviction was pending before the Sessions Court and compromise was effected between the parties. The matter was quashed by High Court by following the ratio decidendi laid down above referred dicto.

This Court is of the opinion that the parties are allowed to compound the offence. Consequently, the judgment of conviction dated 11.8.2014 and order of sentence dated 14.8.2014, passed by the Judicial

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Magistrate, 1st Class, Ambala and impugned judgment dated 7.1.2017 passed by learned Additional Sessions Judge, Ambala stand *set aside*.

Petitioner Vishal Malhotra son of Puran Kumar Malhotra be set at liberty forthwith, if in custody and his custody is not required in any other case.

August 30, 2018 **(RAJ SHEKHAR ATTRI)**
Paritosh Kumar **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no

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