

CRR No.863 of 2018

Date of Decision: 21.03.2018

AMAN KUMAR

... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Vikas Gupta, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Mr. Minkal Thatai, Advocate
for respondent No.2.

Raj Shekhar Attri, J. (Oral)

Challenge has been laid to the order dated 20.01.2018, passed by the Additional Sessions Judge, Tarn Taran, thereby dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 14.07.2017, passed by the learned Sub-Divisional Judicial Magistrate, Patti, in criminal complaint filed under Sections 138 and 142 of the Negotiable Instruments Act 1881 (for short, 'the Act') whereby the petitioner has been awarded sentence to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 5000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under Section 138 of the Act.

Learned counsel for the parties are ad idem that compromise has been effected between the parties. An affidavit of Rakesh Sharma-respondent No.2 regarding compromise, has also been filed, wherein it has been conceded that with the intervention of the respectable of the locality, the matter has been compromised and he has received entire amount of Rs. 80,000/- towards full and final settlement.

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 also expressed similar views in para Nos.6 and 7, which are read 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.,***

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 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 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.”

For the foregoing reasons, the petition is allowed, and impugned judgment of conviction and sentence dated 20.01.2018 passed by the Ld. Additional Sessions Judge, Tarn Taran and the impugned judgment dated 14.07.2017, passed by Ld. Sub Divisional Magistrate, Patti stand set aside and quashed.

Petitioner Aman Kumar is stated to be in jail in this case. So, he is ordered to be released immediately, if his custody is not required in any other case.

[RAJ SHEKHAR ATTRI]
JUDGE

March 21, 2018

Jyoti-IV

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No