

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

**CRM-M-6044 of 2019
DATE OF DECISION:-26.03.2019**

SILA @ SUSHSIL AND ORS.

...PETITIONERS...

V.

STATE OF HARYANA AND ORS.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: None for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

None for respondents No.2 to 5.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 482 Cr.P.C. has been made for setting aside judgment of conviction dated 09.06.2015 and order of sentence dated 10.06.2015 (P-2) passed by Sub-Divisional Judicial Magistrate, Assandh (Karnal), in criminal complaint No.57 of 2013 dated 21.07.2009, under Sections 148, 323, 324, 341, 326, 452 and 149 IPC (P-1) along with all subsequent proceedings arising therefrom, on the basis of compromise dated 29.01.2019 (P-4).

Pursuant to order dated 08.02.2019 of this Court, the parties appeared before the trial Court on 12.03.2019 along with receipts of ₹15,000/- to get their statements recorded. Learned Additional Civil Judge (Sr. Division)-cum-Sub Divisional Judicial Magistrate, Assandh (Karnal),

has submitted her report vide letter bearing No.203, dated 13.03.2019

duly forwarded by learned District and Sessions Judge, Karnal, vide letter bearing No.4186 dated 14.03.2019.

According to the report, learned Additional Civil Judge (Sr. Division)-cum-Sub Divisional Judicial Magistrate, Assandh (Karnal), is satisfied that the parties have entered into compromise voluntarily without any coercion. No accused has been declared proclaimed offender.

The petitioners were held guilty under Sections 323, 326 read with Section 34 IPC by learned Sub Divisional Judicial Magistrate, Assandh (Karnal) vide judgment of conviction dated 09.06.2015. Consequently, vide order dated 10.06.2015, they were sentenced to undergo rigorous imprisonment for two years under Section 326/34 IPC and pay fine of ₹500/- each and for six months under Section 323/34 IPC. In default of payment of fine to further undergo imprisonment for two months. All the sentences were ordered to run concurrently.

Being aggrieved, the petitioners preferred appeal against the aforesaid judgment of conviction and order of sentence, which is still pending adjudication. During the pendency of the said appeal, the parties amicably compromised the matter.

The question is as to whether compounding of offence can be permitted even in non-compoundable offence at the appellate stage after conviction of an accused, on the basis of compromise.

This point is being dealt with in ***“Sube Singh and another vs. State of Haryana and another”, 2013(4) R.C.R. (Criminal) 102.***

Relevant portion of this judgment is reproduced hereunder:-

“(11) The extent and sweep of inherent power exercisable by the High Court under Section 482 CrPC for quashing the criminal proceedings on the basis of compromise between the offender and the victim of crime in a case which is not compoundable under Section 320 CrPC, has since been considered in extenso and answered by the Hon’ble Supreme Court in Gian Singh vs. State of Punjab & Anr., (2012) 4 RCR (Crl.) 543, laying down that the compounding of offence and quashing of criminal proceedings are two separate things and not interchangeable and that the two powers are distinct and different although ultimate consequence may be the same. It has been authoritatively ruled that where the offender and victim have settled their dispute, the High Court in exercise of its inherent power under Section 482 CrPC, is competent to quash criminal proceedings even relating to the non-compoundable offences though such a power need to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc.

“53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High

Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or

dismissal of indictment.

- (12) *The decision in Gian Singh's case (supra) also approves the view taken by a five-Judge Bench of this Court in **Kulwinder Singh & Ors. vs. State of Punjab & Anr.**, 2007(3) RCR (Crl.) 1052.*
- (13) *It is indeed now unarguable to say that the power exercisable by the High Court under Section 482 CrPC for the quashing of criminal prosecution is limited or affected by the provision of Section 320 CrPC.*
- (15) *The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 CrPC and pass an appropriate order so as to secure the ends of justice.*
- (17) *The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 CrPC 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 CrPC 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."*

Considering the aforesaid dictum in **Sube Singh's** case (supra) and the fact that there is no statutory embargo against invoking powers under Section 482 Cr.P.C., after conviction of accused by the trial Court and during pendency of the appeal against such conviction, this Court is of the considered opinion that there would be an exercise in futility, in case, appeal preferred by the petitioners against the impugned judgment of the trial court, pending before the first appellate court is permitted to

compromise arrived at between the complainant and the petitioners in congenial atmosphere, conviction of the petitioners recorded by the trial court be maintained. However, their maximum sentence of 2 years recorded by the trial court under Sections 326/34 IPC be modified to the period already undergone by them.

Ordered accordingly.

26.03.2019
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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:
whether reportable:

Yes/No
Yes/No