

247 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-5789-2019 in /and
CRR No.401-2019 (O&M)
Date of decision:07.03.2019

Suba Singh

...Petitioner

Versus

Baldev Raj

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Suneet Pal Singh Aulakh, Advocate, for the petitioner.

Mr. Veerdavinder R.S. Sekhon, Advocate
for the respondent.

RAJBIR SEHRAWAT, J. (ORAL)

Suba Singh-accused has directed the present revision petition against the judgment dated 19.01.2019 passed by learned Additional District Judge, Kapurthala, vide which, the appeal preferred by the petitioner-accused was dismissed, as well as, the judgment of conviction and order of sentence dated 16.04.2016, passed by Judicial Magistrate 1st Class, Kapurthala, whereby the petitioner was convicted under Section 138 of the Negotiable Instrument Act, (in short- the NI Act) and sentenced to undergo rigorous imprisonment for 02 years and to pay a fine of Rs.5,000/- and in default of which, further undergo the simple imprisonment for 20 days.

On 20.02.2019, the following order was passed by this Court:-

“ Learned counsel for the petitioner contends that the matter has been amicably settled between the parties. Accordingly, the application under Section 147 of NI Act has been filed for compounding of the offence.

Notice in the application for compounding of the offence as well as in the main petition for 07.03.2019.

Mr. Veerdavinder R.S. Sekhon, Advocate accepts notice on behalf of the respondent- complainant.

Counsel for the respondent- complainant has also submitted that he has the instructions to submit that the complainant is not averse to settle the dispute amicably with the petitioner.

Let the parties now appear before the trial Court/Illaq Magistrate on 21.02.2019 or any other date convenient to the Court for recording their statements with regard to compromise. The trial Court/Illaq Magistrate is directed to record the statements of both the parties to its satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. The trial Court/Illaq Magistrate is also directed to send a report along with statements of the parties with regard to validity or otherwise of the compromise effected between the parties and also intimate whether any criminal proceedings are pending against either of the parties or not, before the next date of hearing.

*Since the matter is being compounded by the parties, therefore, the petitioner would be required to deposit the compounding charges in terms of the judgment of the Hon'ble Supreme Court rendered in **Damodar S. Prabhu v. Sayed Babulal H., 2010 AIR (SC) 1907.** Accordingly, it is directed that out of the compounding charges, the petitioner shall deposit an amount of Rs.2,25,000/- with District Legal Services Authority, Kapurthala and the balance amount of Rs.17,000/- shall be deposited with the Institute for Blind, Sector-26, Chandigarh; before the next date of hearing.”*

In pursuance to the above order, learned counsel for the petitioner has submitted, that the petitioner has deposited an amount of Rs.2,25,000/- as compounding charges with District Legal Services Authority, Kapurthala and the balance amount of Rs.17,000/- has been deposited with the Institute for Blind, Sector-26, Chandigarh, in terms of the judgment of the Supreme Court rendered in ***Damodar S. Prabhu v. Sayed Babulal H., 2010 AIR (SC)***

1907. The copy of the same has been taken on record.

Learned counsel for the complainant submits that he has received entire payment and nothing remains due with the accused and he has no objection if the petitioner is acquitted of charge and released from jail.

Vide order dated 20.02.2019, the parties were directed to appear before the trial Court/Illaqua Magistrate, for getting their statements recorded; as to the genuineness of the compromise. In compliance thereof, report of Additional Chief Judicial Magistrate, Kapurthala, dated 02.03.2019, has been received, wherein, it has been noticed that the compromise arrived at between the parties is genuine, voluntarily, without any pressure. It is further submitted that one another criminal proceeding is pending between the parties before this Court i.e. CRR No.398-2019, in which the parties have also compromised the matter and the statements have also been recorded as per order dated 15.02.2019. Except the present case, there is no criminal proceedings pending against either of the parties.

The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death

penalty for criminal acts.

However more often than not the civil disputes or inter-se conflicts of two parties transform themselves into criminal aspect. Therefore, the legal system plays a role to resolve the conflict between two parties; with the added task of ensuring that the adverse impact of dispute on society at large is minimized. But still the core idea is to resolve the conflict between two sides by putting it to rest. Therefore, even the criminal law is required to give due regard to the wishes of the parties to dispute. Recognizing this principle only, the Indian legal System also provides for recognizing the compromise between two sides of a criminal dispute. Section 320 Cr.P.C. is an express provision in this regard. This section not only provides for compounding during the trial, but permits compounding even at appellate or revisional stage. However by its very nature and scope, Section 320 Cr.P.C. cannot be the sole repository; wherein the recognition to a compromise between the parties have; necessarily; to be confined. This section relates only to the offences prescribed under the Indian Penal Code. There are a lot more offences prescribed outside IPC. Even to the offences existing in the IPC new dimensions are added from time to time, making the existing offences to be lighter or stringent and even new modalities of proof of offences are being recognised in view of technological advancement. This necessitates and requires the need for looking beyond Section 320 Cr.P.C. to recognise the compromise between the parties to dispute. But to maintain the sanctity of the procedure prescribed for criminal trial; the Trial Court cannot be permitted to travel beyond the scope prescribed under that procedure. Hence the need for invoking Section 482 Cr.P.C. by the High Court.

But, as observed above, the wishes of only parties to the criminal dispute would not always be sufficient to terminate a criminal trial in view of

the patent, latent or subtle effect; their conduct would have left qua the society at large. Therefore the offences committed by persons involved in governance or administration for acquiring official power or while exercising office power cannot be permitted to be compromised. Likewise, even the offences involving only two private persons, but reflecting depravity of character or involving causing intentional loss of life or causing intentional loss of property by extending imminent threat of loss of life; cannot be permitted to be compromised. Except the above mentioned grave offences, there is every reason that all other offences should be permitted to be compromised by the Court. Since the proof of offences before the Court, again would involve the conduct of the parties to dispute, therefore if the Court does not permit the same to be compromised then the parties would tend to play tricks upon the Court to ensure the acquittal of accused by subverting the administration of criminal justice. And it is never in the interest of administration of criminal justice to force the citizen to learn and adopt the tricks designed to be played upon Courts to subvert the justice system. So it would always be in the interest of justice itself; that the compromise between the parties is recognized and the citizen remain moored and committed to the essentials of the system of administration of justice, at least, qua those offences, which the interest of society does not permit to be compromised.

Hon'ble the Supreme Court has amply clarified the legal position on recognizing compromising in the case of ***Gian Singh Vs. State of Punjab and another, 2012(4) RCR (Criminal) 543***, and has observed 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.”

The present case does not fall in anyone of the exceptions envisaged above. Hence, in view of the report of Additional Chief Judicial, Kapurthala, dated 02.03.2019 made in pursuance of the order dated 20.02.2019 passed by this Court, the Court feels that no useful purpose would be served by keeping the proceedings alive. It will be in the interest of justice, if the settlement reached between the parties is accepted.

Accordingly, the present petition is allowed. The complaint under Section 138 of the NI Act and all consequential proceedings arising therefrom along with the judgment dated 19.01.2019 passed by learned Additional District Judge, Kapurthala as well as the judgment of conviction and order of sentence dated 16.04.2016, passed by Judicial Magistrate 1st Class, Kapurthala, are hereby quashed qua the present petitioner on the basis of compromise arrived at between the parties. The petitioner be released from jail forthwith, if not required in any other case.

(RAJBIR SEHRAWAT)
JUDGE

07.03.2019

hemlata

Whether speaking/reasons
Whether Reportable

Yes/No
Yes/ No

