

261-6            IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

C.R.M-M No.23831 of 2018 (O&M)  
Date of Decision : 25.03.2019

Moginder Singh @ Gugu & anr.

..... Petitioners

Versus

State of Punjab & ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI**

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Present :     Mr. Manbir Singh Basra, Advocate for the petitioners.

Mr. Ramandeep Sandhu, Senior DAG, Punjab.

None for other respondents.

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**AJAY TEWARI, J. (Oral)**

This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.18 dated 09.05.2017 under Sections 342/323/308/325/34 (452 deleted lateron) IPC at Police Station Shri Hargobindpur, District Gurdaspur and all other consequential proceedings arising therefrom on the basis of compromise effected between the parties.

On 30.05.2018 the following order was passed :-

*“Notice of motion for 27.8.2018.*

*On the asking of this Court, Mr. Sandeep Kumar, DAG, Punjab, who is present in Court, accepts notice on behalf of the State. Learned counsel for the petitioner undertakes to supply a complete set of the paperbook to the learned State counsel during the course of the day.*

*In the meantime, parties are directed to appear before the learned trial court/Illaq Magistrate on 3.7.2018 and to get recorded their statements regarding compromise and after recording their statements, learned trial Court/Illaq Magistrate, is directed to send the report regarding the genuineness of compromise on or before the date fixed in the instant petition.*

*A copy of this order be sent to the learned trial Court/Illaq Magistrate, through fax, for compliance.”*

On 29.10.2018 the following order was passed :-

*“As per the report of the learned Judicial Magistrate Ist Class, Batala, none of the parties have appeared for recording their statements.*

*Another opportunity is granted.*

*List on 11.03.2019.*

*Meanwhile, the parties are directed to appear before the learned trial Court/Illaq Magistrate on 22.01.2019 for recording their statements in terms of orders dated 30.05.2018 and 27.08.2018.”*

Thereafter, the report of the Judicial Magistrate 1<sup>st</sup> Class, Batala dated 02.03.2019 has been received wherein it has been mentioned that :-

*“ On 22.01.2019 parties have not appeared before this Court for recording their statements with regard to compromise/settlement in compliance of order dated 29.10.2018 passed by the Hon'ble High Court. Even till date none of the parties have appeared before this Court for recording their statements. So due to non-appearance of parties before this Court, their statements with regard to compromise could not be recorded. As such, in the absence of statements of parties, report regarding the genuineness of compromise between the parties as sought by the Hon'ble High Court can not be submitted.”*

In the present case, the medical opinion has disclosed as follows :-

*“... with the diagnosis of Severe Head Injury, Type II DM with Hypertension. Ct head showed haemorrhagic contusions with surrounding Odema are seen B/L frontal region hyper dense crescentic extra-axial collection is seen along left fronto-temporal region, measuring 6 mm in maximum width-suggestive of acute SDH. The nature of injury was dangerous to life. He was discharged on 27.05.2017.”*

In the circumstances, the present case does not fall within the parameters laid down by the Supreme Court in the judgment passed in **State of Madhya Pradesh vs. Laxmi Narayan and others** in **Criminal Appeal No. 349 of 2019** dated 05.03.2019. Para 16 of the judgment is as under :-

*“16. So far as Criminal Appeal arising out of SLP 10324/2018 is concerned, by the impugned judgment and order, the High Court has quashed the criminal proceedings for the offences punishable under Sections 323, 294, 308 & 34 of the IPC, solely on the ground that the accused and the complainant have settled the matter and in view of the decision of this Court in the case of Shiji(supra) , there may not be any possibility of recording a conviction against the accused. Offence under Section 308 IPC is a non-compoundable offence. While committing the offence, the accused has used the fire arm. They are also absconding, and in the meantime, they have managed to enter into a compromise with the complainant. Therefore, for the reasons stated above, this appeal is also allowed, the impugned judgment and order dated 28.05.2018 passed by the High Court in Miscellaneous Criminal Case No. 19309/2018 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against*

*the accused, and they shall be dealt with, in accordance with law.”*

After arguing for some time and realizing that this Court is not inclined to grant any relief to the petitioners, learned counsel for the petitioners prays for permission to withdraw the present petition with liberty to raise the issue of compromise before the trial Court and the trial Court is directed to consider the same at the stage of judgment.

Allowed as prayed for.

Dismissed as withdrawn with the aforesaid liberty.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

**25.03.2019**

*Pooja sharma-I*

**( AJAY TEWARI )  
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No