

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-33130-2017

Date of decision: 10.05.2019

Harmeet Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. LS Lakhanpal, Advocate for the petitioner.

Ms. Sudeepti Sharma, Addl. AG, Punjab.

Mr. Amandeep Sibia, Advocate for respondent No. 2.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 482 Cr.P.C., has been made for setting aside judgment of dated 27.04.2017 (Annexure P-4) of learned Additional Sessions Judge, Sangrur, vide which the application for compounding of offence was partly allowed qua offences under Sections 323, 341, 506 and 149 IPC and rejected qua offence under Section 148 IPC being not compoundable, on the basis of compromise dated 03.04.2017.

Pursuant to order dated 02.08.2018 of this Court, the parties appeared before the trial Court on 10.08.2018 to get their statements recorded. Learned Judicial Magistrate Ist Class, Malerkotla, has submitted his report vide letter bearing No.118 dated 16.08.2018 duly

forwarded by learned District and Sessions Judge, Sangrur, vide Endst No. 5490-EB dated 17.08.2018. According to the report, Id. Judicial Magistrate Ist Class, Malerkotla, is satisfied that compromise has been reached between the parties voluntarily and without any pressure. No accused has been declared as proclaimed offender.

Vide judgment dated 16.03.2015 (Annexure P-1), the petitioner was held guilty under Sections 148, 341, 323, 506 and 149 IPC, on the basis of his confessional statement. However, he was released on probation. The complainant filed an appeal against the judgment Annexure P-1 and vide judgment dated 19.08.2015 (Annexure P-2), the appeal was allowed and the case was remanded for trial afresh. Subsequently, vide judgment dated 27.01.2016 (Annexure P-3), the petitioner was convicted on merit, but again released on probation, after imposition of fine.

Being aggrieved, the petitioner filed appeal against the judgment Annexure P-3. During the pendency of said appeal, the parties compromised the matter. Thus, vide impugned judgment Annexure P-4, conviction of petitioner under Sections 323, 341, 506 and 149 IPC, except under Section 148 IPC being non-compoundable was set aside.

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 petitioner against the impugned judgment of the trial court, pending before the Ist Appellate Court, is permitted to continue. In such circumstances, the equity demands that in view of compromise arrived at between the complainant and the

petitioner in congenial atmosphere, conviction of the petitioner recorded by the trial court be maintained. However, his sentence recorded by the trial court under Section 148 IPC be modified to the period, if any, already undergone by him.

Ordered accordingly.

Original receipts qua deposit of costs have been produced in Court today. The same are taken on record. Be tagged at appropriate place.

May 10, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No