

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**Date of Decision:** *January 18, 2019*

1.

**Criminal Revision No.2821 of 2010 (O & M)**

Dr. Sohan Singh

..... PETITIONER

*VERSUS*

State of Punjab

..... RESPONDENT

. . .

2.

**Criminal Revision No.1114 of 2011 (O & M)**

Gurmail Singh

..... PETITIONER

*VERSUS*

State of Punjab & another

..... RESPONDENT

. . .

**CORAM:**      **HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

. . .

**PRESENT:** - Mr. B.S. Guliani, Advocate, with Mr. P.S. Guliani, Advocate, for petitioner in Criminal Revision No.2821 of 2010 and for respondent No.2 in Criminal Revision No.1114 of 2011.

Mr. H.S. Sullar, Deputy Advocate General, Punjab, for respondent No.1 – State.

Mr. Ish Puneet, Advocate, for complainant – petitioner in Criminal Revision No.1114 of 2011.

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**Harnaresh Singh Gill, J**

This judgment shall dispose of two revision petitions viz. Criminal Revision No.2821 of 2010 and Criminal Revision No.1114 of 2011 as they involve similar questions of law and facts.

Criminal Revision No.2821 of 2010 has been preferred by accused – petitioner, Dr. Sohan Singh, challenging judgment dated 01.10.2010 passed by the Additional Sessions Judge (Adhoc), Fast Tract Court, Ropar, dismissing his appeal and upholding judgment of conviction and order of sentence dated 31.01.2007 passed by the Judicial Magistrate 1<sup>st</sup> Class, Kharar in case FIR No.9 dated 23.01.1997 under Sections 406, 420 IPC, registered at Police Station, Kharar, whereby he has been convicted under Section 420 IPC and sentenced to undergo RI for two years alongwith fine of ₹ 1,000/- and in default of payment of fine, to further undergo RI for one month.

Through Criminal Revision No.1114 of 2011, complainant – Gurmail Singh has sought enhancement of sentence awarded to respondent No.2 (petitioner in Criminal Revision No.2821 of 2010) in aforesaid judgment of conviction and order of sentence.

At the very outset of arguments, learned counsel for the petitioner – accused has contended that dispute between the parties has been compromised in view of statement of parties recorded on 01.03.2011 in Civil Suit No.516 of 11.05.2007. Complainant – Gurmail Singh (plaintiff in suit for recovery), in his statement has specifically stated that he has received the due amount (subject matter of dispute in FIR No.9 dated 23.01.1997, Police Station, Kharar) and nothing is due against the defendant (accused – petitioner).

Per contra, learned counsel for complainant – Gurmail Singh has contended that dispute is still alive. Rather, an amount of ₹ 10 lac is due to be paid by the petitioner – accused. Learned counsel has further prayed that order of sentence may be modified and sentence awarded to the petitioner – accused be enhanced.

This Court has heard the arguments addressed by learned counsel for the parties and gone through the record.

The facts giving rise to the instant lis are that Dr. Sohan Singh, being a travel agent, had taken an amount of ₹ 2,75,000/- from complainant – Gurmail Singh on 03.09.1996 on the pretext of sending his son Balihar Singh to Italy. However, there is no clue of Balihar Singh. The complainant has alleged that the petitioner – accused and his accomplice Bahadur Singh have misappropriated huge amount under the guise of sending Balihar Singh to Italy.

On the basis of statement of complainant, FIR in question was registered and investigation was set in motion. Accused was arrested. Challan was presented in the court of competent jurisdiction.

Finding a prima facie case, charge under Sections 406, 420 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined as many as 10 witnesses.

Incriminating circumstances appearing in prosecution evidence were put to accused in his statement under Section 313 Cr.P.C. Petitioner – accused denied the same and pleaded false implication.

After hearing learned counsel for the parties and on appreciation of evidence, trial court held the petitioner – accused guilty, convicted and sentenced him vide impugned judgment of conviction and order of sentence.

In this backdrop of facts, petitioner – accused has come up in revision challenging his conviction and sentence, whereas, complainant has sought enhancement of sentence awarded to the petitioner.

The sole point for determination in these petitions is whether complainant can resile from the compromise effected in a civil suit, between him and accused, and seek enhancement of sentence awarded to the accused in FIR case.

It is an admitted fact that complainant – Gurmail Singh had preferred a suit for recovery of ₹ 2,86,458/- against petitioner – accused, Dr. Sohan Singh and one Sukhvir Singh. The said civil suit was dismissed as withdrawn vide order dated 08.03.2011 passed by the Additional Civil Judge (Sr. Div.), Kharar, pursuant to the statements recorded by the complainant as well as petitioner – accused to the effect that matter has been compromised; complainant has received the due amount and nothing is due against the defendant. For ready reference, statement of complainant recorded on 01.03.2011 in suit for recovery reads thus:

“I had entered in to a compromise with defendant No.1 Dr. Sohan Singh alongwith defendant no.2. copy of the compromise is Ex. PX, which bears my signatures and is correct. I have received the due amount and now nothing is due against the defendant. Present Suit be dismissed as withdrawn. Court fees be refunded to me. I will also be

bound to make a statement in the Hon'ble High Court for quashing/ compounding of the matter pending against Sohan Singh.”

From the above, it is clear that complainant – Gurmail Singh had compromised the matter after having received the due amount, that too, before the civil court to which he cannot resile and seek enhancement on the ground that still ₹ 10 lac remain to be paid by the petitioner – accused. Moreover, complainant bound himself to make similar statement before this Court also, for quashing/compounding of the matter pending against the petitioner – accused.

Under similar circumstances, as in the present case, this Court in **Sandip Somany vs. State of Haryana & another, 2016(2) Law Herald 1305**, quashed the FIR taking into consideration the compromise between the parties and observed as under:-

“24. In the MOU, which is, in fact, a ***compromise*** agreement between the parties, it was undertaken by respondent No. 2-complainant to give consent for quashing of the FIR in question. However, now he is denying to have given the said consent by taking one or the other legal plea. The civil suit on the basis of said MOU has already been ***withdrawn***.

25. As such, I am of the view that the present FIR is nothing but misuse of process of court and law qua the present petitioners.”

This Court is of the considered view that once the compromise has been arrived at between the parties, complainant cannot

wriggle out of the same. Non-acceptance of compromise would lead to denial of complete justice which is the very essence of our justice delivery system. After conviction of an accused by the courts below and during pendency of revision against such conviction, compromise has been effected. Moreover, there is no word of claiming enhancement of amount beyond compromise in criminal revision seeking enhancement.

In the light of aforesaid discussion, Criminal Revision No.1114 of 2011 for enhancement of sentence qua respondent No.2 – Dr. Sohan Singh is dismissed. Criminal Revision No.2821 of 2010 qua petitioner – Dr. Sohan Singh is allowed and the impugned judgments passed by the courts below are set aside. Consequently, petitioner – accused Dr. Sohan Singh is acquitted of the charge(s) framed against him.

**January 18, 2019**  
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**(Harnaresh Singh Gill)**  
**Judge**

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No