

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

251

**CRM-M-44437 of 2016
Date of decision: 05.02.2019.**

Rajesh Kumar and another

...Petitioners.

Versus

Dilbag

...Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mrs. Suman Sagar Sheoran, Advocate for the petitioners.

Mr. Vishal R. Lamaba, Advocate for the respondents.

SHEKHER DHAWAN, J.

Present petition under Section 482 Cr.P.C. is for quashing of Complaint No.10-I/2011 (Annexure P-1), under Sections 323, 325, 341, 392, 427, 511, 506 IPC titled 'Dilbagh vs. Rajesh Kumar and another' and for setting aside the judgment of conviction dated 01.10.2015 and order of sentence dated 03.10.2015, passed by Sub Divisional Judicial Magistrate, Hansi, on the basis of compromise dated 23.10.2016 (Annexure P-3).

2. During the course of preliminary hearing, this Court directed the trial Court to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the compromise dated 23.10.2016.

3. In compliance thereof, report of Additional Sessions Judge, Hisar has been received through District & Sessions Judge, Hisar, in which, it has been mentioned that a genuine compromise has been effected between the parties.

4. Learned counsel for the parties relied upon the judgment passed by a Coordinate Bench of this Court in case "**Joginder Ram and others v.**

State of Punjab and another, 2009(1) RCR (Criminal) 495” wherein the appellant was acquitted under Section 323 IPC on the basis of compromise, after conviction by the lower Court.

5. The Hon'ble Full Bench of this Court in case **“Kulwinder Singh v. State of Punjab and another, 2007(3) RCR (Criminal) 1052”** and Hon'ble Division Bench of this Court in case **“Sube Singh and another v. State of Haryana and another, 2013(4) RCR (Criminal) 102”** observed that compounding of offence can be allowed even after conviction, during proceedings of the appeal against conviction pending in Sessions Court and in case of involving non-compoundable offence.

6. An identical question came to be decided by the Hon'ble Supreme Court in case **Gian Singh Versus State of Punjab and another, 2012(4) RCR (Criminal) 543**. Having interpreted the relevant provisions and considering a line of the judgment on the pointed points, it was ruled (para 57) 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 pre-dominantly 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 personnel 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.”

7. The same view was again reiterated by Hon'ble the Apex Court in case **“Narinder Singh and others Vs. State of Punjab and another, 2014(2) RCR (Criminal) 482.**

8. Learned counsel for the parties contended that after recording of judgment of conviction dated 01.10.2015 and order of sentence dated 03.10.2015, the parties have mutually settled their dispute and the matter in controversy revolves around private litigation effecting the parties only and not the society at large. More so, now the parties have decided to keep harmony and live peacefully in future.

9. Having considered the contention of the parties and the fact that the judgment of conviction has been recorded in case bearing Complaint No.10-I/2011 (Annexure P-1), under Sections 323, 325, 341, 392, 427, 511, 506 IPC titled 'Dilbagh vs. Rajesh Kumar and another and the matter is pending before the First Appellate Court. Meanwhile, the parties have settled their dispute amicably and the matter in controversy is such that the same is effecting the parties inter-se and not against the society at large. More so, the compromise has been arrived at with the intervention of the respectable and family members and the parties have decided to keep harmony between them and to live peacefully in future. Hence, it would be in the interest of justice that parties are allowed to compromise the matter.

10. Identical matter was before the Hon'ble Division Bench of this Court in **Sube Singh and another Vs. State of Haryana and another, 2013 (4) R.C.R. (Criminal) 102**, wherein it has been observed as under:-

“(21). In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint

family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Cr.P.C after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.”

11. In view of above, the instant petition is accepted. Consequently, the impugned Complaint No.10-I/2011 (Annexure P-1), under Sections 323, 325, 341, 392, 427, 511, 506 IPC titled ‘Dilbagh vs. Rajesh Kumar and another and all consequent proceedings arising therefrom are hereby quashed, on the basis of compromise dated 23.10.2016 (AnnexureP-3) qua the petitioners only.

12. Resultantly, the impugned judgment of conviction dated 01.10.2015 and order of sentence dated 03.10.2015, passed by the Sub Divisional Judicial Magistrate, Hansi, is set aside. The appeal preferred by the petitioners against the aforesaid judgment would be rendered infructuous and shall be so declared by the first Appellate Court.

(SHEKHER DHAWAN)
JUDGE

05.02.2019
komal

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No