

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1346 of 2013 (O&M)
Date of Decision:1.2.2019

Tejinder Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. B.S.Bhalla, Advocate
for the petitioners.

Mr. H.S.Sullar, DAG, Punjab
assisted by Mr. F.S.Virk, Advocate for
Mr. H.S.Saggar, Advocate
for the complainant.

HARNARESH SINGH GILL, J.

The petitioners have preferred this petition being aggrieved of the judgment dated 11.4.2013 passed by Additional Sessions Judge, (Fast Track Court), Rupnagar vide which appeal filed by them challenging the judgment/order of conviction and sentence dated 23.3.2012, passed by Judicial Magistrate Ist Class, Rupnagar, was dismissed.

The brief facts of the present case are that on 12.10.2004, an affidavit was filed by Nitin Khanna at Police Station Nangal stating therein that Tejinder Singh has opened a school namely Dial Singh Memorial School for Nursing and running Nursing Midwifery course for which necessary permission was required from Punjab Nursing Registration Council and Indian Nursing Council, Delhi. Charanjit Singh, who is a

relative of Tejinder Singh, is also running a similar institution in Mohali. Both Charanjit Singh and Tejinder Singh are running a nursing school in connivance with the employees of Nursing Council and are playing fraud by alleging that their institutions are duly affiliated with Punjab Nursing Registration Council and Indian Nursing Council, Delhi. On the basis of the complaint, FIR No. 114 dated 12.10.2014 was registered at Police Station Nangal under Sections 420, 201, 120-B IPC against petitioners Tejinder Singh and Charanjit Singh.

After completion of investigation and necessary formalities, challan was presented against the petitioners.

Charge was framed against the petitioners under Sections 420, 201, 120-B IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined 14 witnesses during trial.

In the statement recorded under Section 313 Cr.P.C., the petitioners denied the prosecution case and abjured the trial and pleaded false implication.

In defence, two witnesses were examined by the petitioners.

The trial Court vide judgement and order dated 23.3.2012, convicted and sentenced the petitioners as under:-

<i>Name of convict</i>	<i>Offence</i>	<i>Sentence awarded</i>
<i>Tejinder Singh and Charanjit Singh</i>	<i>120-B IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/- each and in default of payment of fine, each convict shall further undergo simple imprisonment for a period of 15 days.</i>

Tejinder Singh and Charanjit Singh	420-B IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/- each and in default of payment of fine, each convict shall further undergo simple imprisonment for a period of 15 days.
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However, it is made clear that any period spent by the convicts in custody, during investigation and trial, shall be set off against the substantive sentences awarded to them. Both the substantive sentences shall run concurrently.”

The appeal preferred by the petitioners was dismissed by the Appellate Court vide judgment dated 11.4.2013.

Learned counsel for the petitioners has submitted that practically all the prosecution witnesses did not support the prosecution case and no offence of cheating is made out. Moreover, it has been further argued that vide letter Ex. D5, the school was affiliated with Punjab Nursing Registration Council and Indian Nursing Council, Delhi and were entitled to give admission. Nobody was cheated as PW-5 Ranjit Singh and PW-6 Mandeep Kaur clearly stated that they have received the admission fee which was deposited by them in the school as their children preferred another institution. Learned counsel for the petitioner has drawn the attention of this Court on the statement of PW-2 Vijay Puri who has specifically stated that she has not made any statement before the police and has never served in Dayal Singh Nursing School at Nangal. Even, in her lengthy cross-examination, she was being confronted with her previous statement made to the police but she did not budge even an inch. Similarly is the case of Kulwant Pabial PW-3. Being a prosecution witness, she has specifically stated that she has not served as a Teacher in the institution run by the petitioners, who was later declared hostile.

Per contra, learned counsel for the State has supported the

prosecution case and has submitted that the prosecution witnesses have fully supported the prosecution version and have corroborated each other while proving the offences under Sections 420, 120-B IPC against the petitioners beyond the shadow of doubt.

During the course of arguments, learned counsel for the petitioners has brought the attention of this Court on the affidavit dated 8.5.2013 (Annexure A-1) filed by Nitin Khanna-complainant. The contents of the said affidavit are as under:-

- 1. That at the instance of the deponent an FIR No. 114 dated 12.10.2004 was registered in P.S. Nangal under Section 420/120-B of the Indian Penal Code, against Tejinder Singh and Charanjit Singh.*
- 2. That the deponent does not have any grudge against the aforesaid Tejinder Singh and Charanjit Singh.*
- 3. That the deponent shall have no objection if they are released on bail or acquitted of the charges against them in the aforesaid FIR.*
- 4. That the deponent shall remain bound to give statement in the Hon'ble High Court if required.*

Simiarly PW-5 Ranjit Singh has also tendered an affidavit dated 8.5.2013 (Annexure A-2) which reads as under:-

- 1. That at the deponent was cited as one of the witnesses in FIR No. 114 dated 12.10.2004 registered in P.S. Nangal under Section 420/120-B of the Indian Penal Code, against Tejinder Singh and Charanjit Singh.*
- 2. That the deponent does not have any grudge against the aforesaid Tejinder Singh and Charanjit Singh as the deponent already got his money from them.*
- 3. That the deponent shall have no objection if they are released on bail or acquitted of the charges against them in the aforesaid FIR.*
- 4. That the deponent shall remain bound to give*

statement in the Hon'ble High Court if required.

Thus, the prayer has been made to compound the offences and to dispose of the revision petition.

In *Sube Singh and another versus State of Haryana, 2013 (4)*

RCR (Criminal) 102, this Court has held as under:-

*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 noncompoundable 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. The pronouncement thus says:-*

“52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

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.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crimedoer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the

offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

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. ”*

In **Ramehar alias Bittu and another 2011(1) R.C.R. (Criminal) 457**, it has been held by this Court that compromise was recorded between the parties and was placed before the Court and it was taken into consideration that the accused has suffered trial for more than 13

years and accordingly, the offence was compounded and conviction and sentence of the appellant was set aside.

In the present case, complainant-Nitin Khanna has tendered an affidavit dated 8.5.2013 that he does not have any grudge against Tejinder Singh and Charanjit Singh (petitioners) and he is bound to give the statement before the Hon'ble High Court, if so required.

Hence, the complainant in the present case has tendered an affidavit that the matter has been compromised. In the present case, FIR was registered in the year 2004 and the petitioners have faced the agony of trial for the last more than 14 years and have already undergone 01 month and 11 days out of substantive sentence of two years awarded to them.

Therefore, offences under Sections 120-B, 420 IPC are compounded. However, by upholding the judgment of convictions, the order of sentence is modified to the extent that sentence of 02 years is reduced to 01 month and 11 days, as already undergone.

With the aforesaid order, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

February 01, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes