

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

**CRM-M-50861 of 2018
DATE OF DECISION:-09.05.2019**

GURVINDER KAUR AND ORS.

...PETITIONERS...

V.

KASHMIR KAUR AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Neeraj Madaan, Advocate
for the petitioners.

Mr. J.S. Ghuman, Advocate,
for the respondents.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 482 Cr.P.C. has been made for quashing Criminal complaint No.RBT 168/1/12 registration No.COMI/2240/2013 dated 30.08.2012, under Sections 323, 452, 506, 148 and 149 IPC and judgment dated 26.07.2017 (P-2), vide which the petitioners were convicted and all subsequent proceedings arising therefrom, on the basis of compromise (P-3).

Pursuant to latest order dated 11.02.2019, of this Court, parties appeared before the trial Court on 24.01.2019 along with receipt of ₹20,000/- for recording their statements. Learned Addl. Sessions Judge, Jalandhar, has submitted his report vide letter bearing No.113 dated 18.04.2019 duly forwarded by learned District and Sessions Judge,

Jalandhar, vide letter bearing No.1120 G/JRK dated 19.04.2019.

According to the report, ld. Addl. Sessions Judge, Jalandhar, is satisfied that compromise arrived at between complainant-Kashmir Kaur and remaining appellants namely Gurvinder Kaur, Narinder Singh and Darshan Singh is genuine and the same has been effected voluntarily, without any coercion, duress or undue influence and the complainant has voluntarily stated that she has no objection, if the quashing petition is allowed.

The petitioners were held guilty by learned Judicial Magistrate Ist Class, Phillaur vide judgment of conviction dated 26.07.2017. Vide order of sentence dated 26.07.2017, they were sentenced to undergo imprisonment for a period of two years and pay fine of ₹500/- each under Section 452 read with Section 148 IPC and one year under Sections 506 and 323 read with Section 148 IPC. In default of payment of fine to further undergo imprisonment for one month. All the sentences were ordered to run concurrently.

Being aggrieved, the petitioners preferred appeal against the aforesaid judgment of conviction and order of sentence, which is still pending adjudication. During the pendency of the said appeal, the parties have amicably compromised the matter.

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 first appellate court is permitted to continue. In such circumstances, the equity demands that keeping in view the compromise arrived at between the complainant and the petitioner in congenial atmosphere, conviction of the petitioners recorded by the trial court is maintained. However, sentence of 2 years recorded by the trial court under Section 452 read with Section 148 IPC against the petitioners is modified to the period already undergone by them.

With the above modification in the matter of sentence, petition stands disposed of.

09.05.2019

sonika

(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:**Yes/No****whether reportable:****Yes/No**