

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

CRR No.3866-2018 (O&M)

Date of decision:01.04.2019

Abhey and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ajay Shekhawat, Advocate, for the petitioners.

Mr. Parveen Aggarwal, DAG, Haryana
for respondent No.1-State.

Mr. Akash Vashisth, Advocate
for respondents No.2 to 4.

RAJBIR SEHRAWAT, J. (ORAL)

CRM-44222-2018

Application is allowed. The document as Annexure P-1 is taken n
record.

CRR No.3866-2018 (O&M)

This is a revision petition challenging the judgment and conviction order dated 16.11.2018 passed by learned Additional Sessions Judge, Charkhi Dadri, whereby, the appeal filed by the petitioners was dismissed, and the judgment of conviction and order of sentence dated 11.06.2015 passed by Judicial Magistrate 1st Class, Charkhi Dadri, vide which, the petitioners were held guilty for committing offences punishable under Sections 148, 323, 325, 506 of IPC read with Section 149 of IPC and was sentenced to undergo 18 months of simple imprisonment and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 02 months, was upheld.

Learned counsel for the petitioners had submitted that since the

matter has been amicably settled between the parties, therefore, the parties may be permitted to compound the offence; and by setting aside the judgments/orders passed by the Courts below, the petitioners be ordered to be acquitted of the charges.

Mr. Akash Vashisth, Advocate appearing on behalf of respondents No.2 to 4/complainant, did not dispute the compromise arrived at between the parties. He had expressed his no objection for compounding of the offence; as prayed for by the counsel for the petitioners.

Therefore, 07.02.2019, the following order was passed by this Court:-

“CRM-3488-2019

This is an application for impleading the Complainant, namely, Pralad Singh son of Chandi Ram, Injured namely, Dinesh Kumar son of Pralad Singh son of Chandi Ram and Rattni wife of Dhanpat. All are resident of village Kanhra, Police Station Badhra, Tehsil Charkha Dadri, District Bhiwani, now District Charkhi Dadri, Haryana as respondents No. 2 to 4.

For the reasons mentioned in the application, the persons named in the head note of the application are ordered to be impleaded as respondents No. 2 to 4.

Civil Misc. application is allowed.

Amended Memo of Parties attached with the application is also ordered to be taken on record.

CRM-41687-2018

To be heard alongwith the main case.

CRR-3866-2018

Learned counsel for the petitioners submits that parties have amicably settled the dispute.

Notice of motion.

On asking of the Court, Mr. Parveen Aggarwal, DAG, Haryana accepts notice on behalf of the State. Mr.Akash

Vashisth, Advocate has put in appearance on behalf of the Complainant and newly added respondents.

Learned counsel for the petitioners is directed to hand over a copy of the petition to the opposite counsels during the course of the day.

Learned counsel for the respondents No. 2 to 4 submits that even the Complainant and the injured are not averse to settle the dispute.

Let the parties now appear before the Trial Court/Illaq Magistrate on 01.03.2019 or any other date convenient to the Court for recording their statements with regard to compromise. The Trial Court/Illaq Magistrate is directed to record the statements of both the parties to its satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. The Trial Court/Illaq Magistrate is also directed to send a report along with statements of the parties with regard to validity or otherwise of the compromise effected between the parties and also intimate whether any criminal proceedings are pending against either of the parties or not, before the next date of hearing.

Adjourned to 01.04.2019.

CRM-41686-2018

Since learned counsel for the parties have intimated the Court that they intend to settle the dispute through amicable settlement, it would not be unjustified if the sentence of the petitioners is temporarily suspended and they are ordered to be released on interim bail. Accordingly, it is ordered that the petitioners be released on interim bail on their furnishing bail bonds/ sureties to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, till next date of hearing.”

In compliance of above said order, report of Judicial Magistrate

1st Class, Charkhi Dadri, dated 11.03.2019, has been received, wherein, it

has been noticed that the compromise arrived at between the parties is with their own free will and no criminal proceedings are pending against either of the parties.

The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.

However more often than not the civil disputes or inter-se conflicts of two parties transform themselves into criminal aspect. Therefore, the legal system plays a role to resolve the conflict between two parties; with the added task of ensuring that the adverse impact of dispute on society at large is minimized. But still the core idea is to resolve the conflict between two sides by putting it to rest. Therefore, even the criminal law is required to give due regard to the wishes of the parties to dispute. Recognizing this principle only, the Indian legal System also provides for recognizing the compromise between two sides of a criminal dispute.

Section 320 Cr.P.C. is an express provision in this regard. This section not

only provides for compounding during the trial, but permits compounding even at appellate or revisional stage. However by its very nature and scope, Section 320 Cr.P.C. cannot be the sole repository; wherein the recognition to a compromise between the parties have; necessarily; to be confined. This section relates only to the offences prescribed under the Indian Penal Code. There are a lot more offences prescribed outside IPC. Even to the offences existing in the IPC new dimensions are added from time to time, making the existing offences to be lighter or stringent and even new modalities of proof of offences are being recognised in view of technological advancement. This necessitates and requires the need for looking beyond Section 320 Cr.P.C. to recognise the compromise between the parties to dispute. But to maintain the sanctity of the procedure prescribed for criminal trial; the Trial Court cannot be permitted to travel beyond the scope prescribed under that procedure. Hence the need for invoking Section 482 Cr.P.C. by the High Court.

But, as observed above, the wishes of only parties to the criminal dispute would not always be sufficient to terminate a criminal trial in view of the patent, latent or subtle effect; their conduct would have left qua the society at large. Therefore the offences committed by persons involved in governance or administration for acquiring official power or while exercising office power cannot be permitted to be compromised. Likewise, even the offences involving only two private persons, but reflecting depravity of character or involving causing intentional loss of life or causing intentional loss of property by extending imminent threat of loss of life; cannot be permitted to be compromised. Except the above mentioned grave offences, there is every reason that all other offences should be

permitted to be compromised by the Court. Since the proof of offences before the Court, again would involve the conduct of the parties to dispute, therefore if the Court does not permit the same to be compromised then the parties would tend to play tricks upon the Court to ensure the acquittal of accused by subverting the administration of criminal justice. And it is never in the interest of administration of criminal justice to force the citizen to learn and adopt the tricks designed to be played upon Courts to subvert the justice system. So it would always be in the interest of justice itself; that the compromise between the parties is recognized and the citizen remain moored and committed to the essentials of the system of administration of justice, at least, qua those offences, which the interest of society does not permit to be compromised.

Hon'ble the Supreme Court has amply clarified the legal position on recognizing compromising in the case of ***Gian Singh Vs. State of Punjab and another, 2012(4) RCR (Criminal) 543***, and has observed 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 predominatingly 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 personal 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.”

The present case does not fall in anyone of the exceptions envisaged above. Hence, in view of the report of Judicial Magistrate 1st Class, Charkhi Dadri, dated 11.03.2019 made in pursuance of the order dated 07.02.2019 passed by this Court, this Court feels that no useful purpose would be served by keeping the proceedings alive. It will be in the interest of justice, if the settlement reached between the parties is accepted.

Accordingly, the present petition is allowed. The FIR No.201, dated 10.08.2009, registered under Sections 148, 323, 325 and 506 read with Section 149 of IPC at Police Station Badhra; along with all subsequent proceedings arising therefrom and the judgment of conviction and order of sentence dated 11.06.2015 passed by Judicial Magistrate 1st Class, Charkhi Dadri, as well as the judgment dated 16.11.2018 passed by learned Additional Sessions Judge, Charkhi Dadri, are hereby quashed qua the present petitioners on the basis of compromise arrived at between the parties. The petitioners are ordered to be acquitted of the charges. The petitioners be released from jail forthwith, if not required in any other case.

01.04.2019
hemlata

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasons
Whether Reportable

Yes/No
Yes/ No