

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

CRA-S-4540-SB of 2016 (O&M)
Date of Decision: 05.7.2019

Gheesa Ram

.....Appellant

Vs.

State of Haryana and another

.....Respondents

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

Present: - Mr. Vinod Bhardwaj, Advocate
for the appellant.

Mr. S.S.Pannu, DAG, Haryana.

Mr. Surinder Gaur, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J.

The present appeal has arisen from the order dated 22.11.2016, passed by the Additional Sessions Judge, Kaithal, vide which appellant-Gheesa Ram has been convicted. In the present case, FIR No. 84 dated 27.8.2009 was registered under Sections 323, 342 and 506 of the Indian Penal Code, 1860 ('IPC' for short) at Police Station Rajound.

Brief facts of the present case are that on 25.8.2009, complainant Sheo Singh got recorded his statement with the police that on 23.8.2009, a dispute took place between a woman of village Narwal and Raghbir Singh, an employee of Water Supply Department as Anil, Pardeep and Goldy were pressurizing Raghbir Singh to start the water supply,

Raghubir avoided them and called his family members over telephone. On the other hand, Anil and others called a large number of persons from Sainsi community. Apprehending the danger, Anil, Pardeep and Goldy raised alarm, upon which some persons from Rajput community came there and a clash between the Rajput and Sainsi communities took place. Resultantly, persons from both the sides sustained minor injuries. Rajput community approached SHO Police Station, Rajound, where accused-appellant Gheesa Ram, Sub Inspector, was present to whom a request was made to take action but the accused-appellant detained Anil, Jaibir, Krishan, Dalip, Kuldeep and Pardeep in the police station. On receipt of information regarding the dispute in the village and detention of young boys in police station, the Superintendent of Police and Sub Divisional Magistrate, Kaithal, along with other staff came at village Narwal, a meeting was held between the two communities in the Government School, Narwal on 24.8.2009 and the matter was resolved. Superintendent of Police and Sub Divisional Magistrate directed appellant Gheesa Ram to release the above six persons of Rajput community. Complainant Sheo Singh and Narinder also requested the appellant to release said six persons from the illegal custody but the appellant started abusing them as also the other members of Rajput community. After sometime the complainant heard hue and cry and when he entered into the police station, found that the above said six boys were lying in a naked condition on the floor and the appellant was giving them beatings with a strap. In the meantime, Narender and Suresh Devi (mother of one of the six boys, namely, Jaibir) reached there. Suresh Devi asked the appellant as to why he was beating them. On this the appellant warned her either to leave the police station or she would be stripped naked. When

Suresh Devi did not leave, the accused-appellant kicked her abdomen and then he sat on the driver seat of the gypsy, parked in the police station. Suresh Devi again requested the appellant not to leave the police station before releasing the boys. She caught hold of the window of the gypsy from driver side. The appellant suddenly started gypsy and dragged her to some distance, due to which, she fell down and the appellant deliberately ran the gypsy over her. Suresh Devi succumbed to the injuries and the appellant fled away, leaving the vehicle there.

On hearing about the death of Suresh Devi, villagers reached there and the dead body was taken to the hospital. Accordingly, the present FIR was registered against the appellant.

It is the case of the complainant that on the basis of post-mortem report of Suresh Devi, initially the FIR was registered under Section 302 IPC but final report under Section 173 Cr.P.C. was prepared qua commission of offence punishable under Sections 323, 342 and 506 IPC only and the same was presented in the Court and the offence under Section 302 IPC was deleted by the police.

In the present case, challan against the appellant stood committed to the Court of Sessions on 10.12.2013.

As Section 302 IPC was deleted, complainant Sheo Singh filed a complaint dated 2.2.2010 against the appellant and vide order dated 24.4.2014, the complaint and FIR case were ordered to be heard together.

Vide order dated 24.4.2014, the appellant was charge sheeted for the commission of offence punishable under Sections 323, 342, 506, 304 IPC.

After taking into consideration the evidence on record and the

criminal complaint preferred by Sheo Singh, learned Additional Sessions Judge, Kaithal, vide order dated 22.11.2016, while acquitting the accused of the charges under Sections 304 and 506 IPC, convicted the appellant for the commission of offence punishable under Sections 323 and 342 IPC and vide order dated 28.11.2016 sentenced him as under:-

323 IPC	<i>To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- under Section 323 IPC. In default of payment of fine he will further undergo rigorous imprisonment for one month.</i>
342 IPC	<i>To undergo rigorous imprisonment for a period of one month and to pay a fine of Rs. 500/- under Section 342 IPC. In default of payment of fine he will further undergo rigorous imprisonment for 10 days.</i>

Aggrieved against the aforesaid order of conviction and sentence, the appellant has preferred the present appeal.

An application bearing CRM No. 3160 of 2019 has been filed by the appellant for compounding the offence on the ground that during the pendency of the present appeal, the matter stands compromised between the parties on 5.12.2018.

Learned counsel for the appellant has submitted that during the pendency of the appeal, the matter has been compromised between the parties and the offences for which the appellant was convicted are compoundable. It is prayed that in view of the compromise, the conviction and sentence may be set aside. Reliance has been placed upon the judgment of the Hon'ble Apex Court in ***Khursheed and another versus State of U.P. And another 2007(4) R.C.R. (Criminal) 495*** where the compounding of the offence was allowed and the appellant was acquitted of the charges framed against him. It was observed by the Apex Court that ends of justice would

be met if permission for an offence punishable under Section 325 IPC read with Section 34 IPC, as required by sub-section (2) of Section 320 Cr.P.C. is granted. It may be noticed that the compounding of offence was allowed on the basis of the compromise effected between the parties during the pendency of the SLP before the Supreme Court.

The Hon'ble Apex Court has also drawn a conclusion in the said case that as per sub-section (8) of Section 320 Cr.P.C. compounding under this Section shall have an effect of acquittal of the accused. The resultant effect of compounding of offences would be that the accused should be acquitted.

Similar view was taken by the Hon'ble Apex Court in a case ***Ram Lal versus State of Jammu and Kashmir 2000 (1) R.C.R. (Criminal) 92***. In the said case, the appellant was convicted under Section 324 IPC and sentenced to imprisonment for two years. However, the offence under Section 324 IPC was compounded and conviction and sentence was set aside during the pendency of the matter before the Hon'ble Apex Court.

The co-ordinate Bench of this Court in a case ***Sube Singh and another versus State of Haryana and another 2014(4) RCR (Criminal) 102*** has observed that the inherent powers exercised 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 Cr.P.C, has since been considered in extenso and answered by the Hon'ble Supreme Court in a case ***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 the ultimate consequence may be the same. It has also been observed that no doubt, the 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 criminal 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. Thus, with the above illustration, the Court has drawn a conclusion that the offences are liable to be quashed, but with the leave of the Court.

It has been brought on record that during the pendency of the present appeal, the matter has been compromised between the parties which was reduced into writing on 5.12.2018 and the same is annexed as Annexure A-1. As per the compromise, the complainant has no objection if the appellant is acquitted of the charges framed against him. It has also been agreed that the complainant will withdraw the appeal, preferred by him bearing No. CRA-AD-124 of 2017 and the appeal in hand is to be decided on the basis of the compromise dated 5.12.2018. Affidavits of the complainant as well as appellant, reiterating the factum of compromise, are also taken into consideration.

In the instant case, the parties have put an end to their dispute and an attempt has been made to promote peace and harmony amongst themselves. Since the parties have amicably settled their dispute, there is no legal impediment in granting permission to them to compound the offence. The act of compromise and prayer for compounding the offence falls under Section 320 Cr.P.C. which read as under:-

320 Cr.P.C. Compounding of offences.

(1) The offences punishable under the sections of the Indian

Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:-

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
x x x	x x x x	x x x x x x
Voluntarily causing hurt	323	The person to whom the hurt is caused.
x x x	x x x x	x x x x x x
Wrongfully restraining or confining any person	342	The person restrained or confined.
x x x	x x x x	x x x x x x

(2) The offences punishable under the sections of the Indian Penal (45 of 1860) Code specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:

x x x x x

(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under Section 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908), of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he

has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

Resultantly, the effect of compounding of offence would be that the accused should be acquitted. In other words, once the offence has been compounded and the requisite permission is granted by the Court, the accused must be acquitted.

It needs to be emphasised that exercise of inherent powers 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 compounding of the offence during the pendency of appeal nor any precise and inflexible guidelines can be provided in this regard.

Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of the offence(s). These are different and not interchangeable.

Thus, according to this Court, the power of compounding of

offence given to the Court falls under the mandate of Section 320 Cr.P.C. The Court is guided solely and squarely whereby as per the material on record, whether ends of justice would be justified to exercise of the power, although the ultimate consequence may be acquittal.

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 yet certain crimes have been made compoundable in law, with or without permission of the Court. If the present permission is not taken into consideration, then there shall be causality and ends of justice shall be defeated.

Accordingly, CRM No. 3160 of 2019 for seeking permission to compound the offence, is allowed. The appeal i.e. CRA-S-4540-SB of 2016 is also allowed. Consequently, the judgment of conviction dated 22.11.2016 and order of sentence dated 28.11.2016 passed by the Court below are set aside and the appellant is acquitted of the charges framed against him.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 05, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes