

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

252

**CRM-M-5497-2019**

**Date of decision: 24.01.2020**

Sushil @ Shila and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Manoj Kumar Taya, Advocate  
for the petitioners.

Mr. Ajun Singh Yadav, AAG, Haryana  
for respondent No.1.

Mr. Sandeep Singh, Advocate  
for respondent No.2.

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**ARUN KUMAR TYAGI, J (ORAL)**

**Petitioners-Sushil @ Shila, Mohit, Sumit and Ashwani**

**@ Sonu** have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.1014 dated 18.12.2018 registered under Sections 307 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") and Sections 25 of the Arms Act, 1959 at Police Station Assandh, District Karnal (**Annexure P-1**) along with all consequential proceedings arising therefrom in view of the compromise dated 30.01.2019 (**Annexure P-2**) effected with respondent No.2-**Anand Pal**.

2. The above said FIR was registered on written complaint made by respondent No.2/complainant-Anand Pal to SHO, Police Station Assandh, District Karnal. In the complaint respondent No.2 alleged that the petitioners/accused obstructed their way by putting earth due to which their trolley of sugarcane turned over. On 17.12.2018 at about 11:30 A.M., when he, Kuldeep, Suresh and Vijay

were repairing that passage, then all of a sudden Sumit and Ashwani @ Sonu having country made pistols in their hands, Sushil carrying bag on his back and Mohit armed with pistol came there and Mohit fired from the pistol aiming him with intention to kill him but the same missed him. Mohit again fired on him which also missed him. Sumit and Ashwani had also pointed country made pistols on them. Mohit started loading his pistol for the third time. In the meanwhile, on hearing the noise the persons from the neighbourhood gathered them. On seeing them coming, the accused persons fled from the spot with their weapons while threatening to kill them if they came again in their way.

3. The petitioners have filed the present petition for quashing of the FIR on the grounds that now with the intervention of respectables, the matter has been amicably compromised between the parties and they have resolved their differences.

4. The Coordinate Bench of this Court, while issuing notice of motion on 05.02.2019, passed the following order:-

*"Prayer made herein is for quashing of FIR No. 1014, dated 18.12.2018, registered at Police Station Assandh, District Karnal, under Sections 307, 506, 34 IPC and Section 25 of Arms Act, and proceedings emanating therefrom on the basis of a compromise effected between the parties.*

*Notice of motion for 22.5.2019.*

*The parties are directed to appear before the Illaqa Magistrate/trial Court on 12.3.2019 for recording their statements qua compromise.*

*The Illaqa Magistrate/trial Court is directed to submit a report on or before the next date of hearing as regards authenticity and genuineness of compromise after recording statement of all the affected parties.*

*The Illaqa Magistrate/trial Court shall also furnish the following information:*

*1. Whether there is any other accused other than the petitioners, arrayed in this petition.*

*2. Whether there is any other complainant or affected/ aggrieved party other than the respondents, arrayed in the petition. "*

5. In compliance of the above said order, learned Additional Civil Judge (Sr. Divn.)-cum-Sub Divisional Judicial Magistrate, Assandh (Karnal) has recorded the statements of both the parties and submitted report dated 13.03.2019. The relevant part of the same reads as under:-

*".....On 12.3.19 respondent Anand Pal son of Jagbir Singh and petitioners Mohit son of Naresh Pal, Sumit son of Ranbir, Ashhwani son of Om Parkash and Sushil @ Shilla son of Rattan Singh appeared before the Court of undersigned. They were duly identified by their counsel. Respondents and petitioners named above have made a statement that in the present case they have compromised the matter and this compromise has been entered into between both the parties without any pressure.*

*From the statement of the parties it is clear that the parties have entered into compromise voluntarily without any coercion. Therefore, the compromise is genuine.*

*As per the joint statement of the parties respondent has compromised the matter with the petitioners and have no objection if FIR against them is quashed.*

*It is pertinent to mention that Investigating Officer of the present case namely SI Karambir was also directed to appear before the Court and he has stated that no other accused except petitioners in the present case. He has further stated that no other aggrieved party except the respondent i.e. Anand Pal son of Jagbir in the present case.*

*Therefore, reply to the various observations raised by the Hon'ble Court is as per follows:-*

*(1) Investigating Officer, SI Karambir has stated that in*

*the present case no other accused except the petitioners.*

*(2) Investigating Officer has stated that no other aggrieved party except the respondent i.e. Anand Pal son of Jagbir in the present case."*

6. Reply by way of affidavit of Sh. Dalbir Singh, Deputy Superintendent of Police, Assandh, District Karnal was filed on behalf of respondent No.1-State of Haryana. In the reply, it has been submitted that after concluding investigation, report under Section 173(2) was prepared on 23.04.2019 and was presented before the Court on 27.05.2019 and charges have not been framed in the case. Since the offences under Section 307 of the IPC and Section 25 of the Arms Act, 1959 fall in the category of heinous and serious offences which are to be treated as crime against the society, the FIR and consequent proceedings cannot be quashed on the basis of compromise in view of the observations in ***State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255***. Therefore, the petition may be dismissed.

7. Photostat copy of the report under Section 173(2) of the Cr.P.C. has been filed by the petitioners today which is taken on record.

8. I have heard learned counsel for the petitioners, learned State counsel and learned counsel for respondent No.2.

9. Learned counsel for the petitioners has argued that in the present case there was no injury caused to the complainant and Section 307 of the IPC was added for the sake of it to make out the case of heinous crime against the petitioners. The occurrence arose out of a dispute over the passage. The parties have compromised and resolved the dispute. The continuation of the proceedings will be an abuse of

process and will subject the petitioners to great oppression and extreme injustice. Therefore, the FIR and all consequential proceedings may be quashed.

10. Learned counsel for respondent No.2/complainant has admitted the factum of compromise and concurred in submissions of the learned counsel for the petitioners.

11. Learned State counsel has argued that the offences under Section 307 of the IPC and Section 25 of the Arms Act, 1959 fall in the category of heinous and serious offences which are to be treated as crime against the society. The FIR and consequential proceedings cannot be quashed on the basis of compromise in view of the observations in ***State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255***. Therefore, the petition may be dismissed.

12. In ***State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255***, Hon'ble three Judge Bench of the Supreme Court, while deciding the reference made in view of the apparent conflict between the two decisions of Hon'ble Supreme Court in the cases of ***Narinder Singh v. State of Punjab 2014(2) R.C.R.(Criminal) 482 : (2014) 6 SCC 466*** and ***State of Rajasthan v. Shambhu Kewat, 2014(1) R.C.R.(Criminal) 199 : (2014) 4 SCC 149***, observed as under:-

*“12. Now so far as the conflict between the decisions of this Court in the cases of Narinder Singh (supra) and Shambhu Kewat (supra) is concerned, in the case of Shambhu Kewat (supra), this Court has noted the difference between the power of compounding of offences conferred on a court under Section 320 Cr.P.C., 1973 and the powers conferred under Section 482 Cr.P.C., 1973 for quashing of criminal proceedings by the High Court. In*

*the said decision, this Court further observed that in compounding the offences, the power of a criminal court is circumscribed by the provisions contained in Section 320 Cr.P.C., 1973 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 proceedings or criminal complaint under Section 482 Cr.P.C., 1973 is guided by the material on record as to whether ends of justice would justify such exercise of power, although ultimate consequence may be acquittal or dismissal of indictment. However, in the subsequent decision in the case of Narinder Singh (supra), the very Bench ultimately concluded in paragraph 29 as under:*

*"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:*

*29.1. Power conferred under section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.*

*29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:*

*(i) ends of justice, or*

*(ii) to prevent abuse of the process of any court.*

*While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.*

*29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.*

*29.4. On the other hand, those criminal cases having*

*overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.*

*29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.*

*29.6. Offences under section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.*

*29.7. While deciding whether to exercise its power under section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material*

*mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."*

*13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:*

*i) that the power conferred under section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;*

*ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;*

*iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;*

*iv) offences under section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of section 307*

*IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;*

*v) while exercising the power under section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”*

13. In the present case on completion of investigation report under Section 173(2) of the Cr.P.C. has been filed against the petitioners on the basis of statements of respondent No.2/complainant-Anand Pal, Kuldeep, Suresh and Vijay, disclosure statements of the petitioners and recovery of pistols from petitioners No.2 and 3/accused Mohit and Amit @ Sumit in accordance with their disclosure statements. Apart from statements of respondent No.2/complainant-Anand Pal, Kuldeep, Suresh and Vijay, there is no medical or forensic evidence or FSL report to corroborate the ocular evidence as to commission of subject offences by the petitioners. In the present case petitioner No.2/accused Mohit is alleged to have fired two times with intention to kill respondent No.2/complainant-Anand Pal which missed

and admittedly no injury was suffered by respondent No.2-Anand Pal. There is no FSL report matching the empties recovered to have been fired with the pistol recovered from petitioner No.2/accused-Mohit. In the facts and circumstances of the case, even the reasonable probability of the shots having been fired in the air cannot be ruled out with the consequent possibility of incorporation of section 307 IPC for the sake of making out a case of commission of heinous offence against the petitioners. In such an eventuality, quashing of FIR and consequential proceedings in respect of offence under Section 307 of the IPC was held to be permissible in *Narinder Singh v. State of Punjab 2014(2) R.C.R.(Criminal) 482* and *State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255,*

14. A perusal of the report of Sub Divisional Judicial Magistrate, Assandh clearly shows that the matter has been compromised by the parties with their free consent, voluntarily and without any coercion or undue influence. The occurrence allegedly took place due to dispute over the passage. The parties have resolved their entire dispute among themselves. The compromise has been arrived at between the parties at the initial stage and the compromise will restore cordial relations between the parties and will contribute to peace and harmony in the society.

15. In view of the facts and circumstances of the case, the possibility of conviction of the petitioners is remote and bleak. Continuation of this case will put the petitioners to great oppression and extreme injustice would be caused to the petitioners if the FIR and all consequential proceedings are not quashed. Therefore, FIR No.1014

dated 18.12.2018 registered under Sections 307 and 506 read with Section 34 of the IPC and Sections 25 of the Arms Act, 1959 at Police Station Assandh, District Karnal (**Annexure P-1**) is quashed along with all consequential proceedings arising therefrom.

16. The petition is allowed accordingly.

**24.01.2020**

Vinay

**(ARUN KUMAR TYAGI)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No