

CRM-M-23963-2020

Date of decision : 15.10.2020

ARSH KABIR SINGH GUJRAL AND ANOTHERPetitioners

Vs.

STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ankit Chowdhri, Advocate for the petitioners.
Mr. Ramandeep Sandhu, Senior DAG, Punjab.
Mr. Amaninder Preet, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

Heard through Video Conferencing.

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.7 dated 08.01.2020 under Sections 406 and 498-A of the Indian Penal Code, 1860 registered at Police Station, City Kharar, District SAS Nagar, Mohali (Annexure P-1) on the basis of the mutual settlement dated 10.02.2020 (Annexure P-2) reached/executed between the parties.

Vide order dated 24.08.2020, this Court had directed the statements of the parties to be recorded by the concerned CJM/Illaq Magistrate/Trial Court and a report qua the same be sent to this Court. A report of the Judicial Magistrate 1st Class has been received wherein it has been stated that the statements of the parties have been recorded and it transpires that the compromise in the present case is genuine and voluntary and has been entered into with the free will of the parties.

Learned counsel for the parties are *ad idem* that the parties have since been granted divorce by mutual consent on 13.08.2020. There are no children out of the wedlock and now all disputes between the parties stand resolved.

The Apex Court in the case of “**Gian Singh V/s State of Punjab & Anr.**” 2012 (10) SCC 303, has held as under:

“56. We find no incongruity in the above principle of law and the decisions of this Court in *Simrikhia*, *Dharampal*, *Arun Shankar Shukla*, *Ishwar Singh*, *Rumi Dhar (Smt.)*.28 and *Ashok Sadarangani*. The principle propounded in *Simrikhia* that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In *Dharampal*, the Court observed the same thing that the inherent powers under section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Similar statement of law is made in *Arun Shankar Shukla*. In *Ishwar Singh*, the accused was alleged to have committed an offence punishable under Section 307 Indian Penal Code and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 Indian Penal Code was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In *Rumi Dhar (Smt.)*.28 although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120B/420/467/468/471 of the Indian Penal Code along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a *prima facie* case has been made out against the accused for framing the charge. *Ashok Sadarangani* was again a case where the accused persons were charged of having committed offences under

sections 120B, 465, 467, 468 and 471, Indian Penal Code and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilised such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi, Nikhil Merchant and Manoj Sharma and it was held that B.S. Joshi, and Nikhil Merchant dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

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 pre-dominatingly 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.”

Learned counsel for the petitioners has also referred to the law laid down by this Court in “**Kulwinder Singh & Ors. Vs. State of Punjab & Anr.**” 2007 (3) RCR 1052 wherein it has been held that even in non-compoundable offences, if the parties have entered into a compromise, this Court has wide powers under Section 482 CrPC to quash the proceedings to prevent abuse of law and secure the ends of justice.

In view of the above and keeping in view the report by the Trial Court that the parties have genuinely entered into a compromise and all the disputes between the parties have been resolved, it would not be in the interest of justice to continue the criminal proceedings.

Resultantly, FIR No.7 dated 08.01.2020 under Sections 406 and 498-A of the Indian Penal Code, 1860 registered at Police Station, City Kharar, District SAS Nagar, Mohali and all subsequent proceedings arising out of the said FIR stand quashed.

The present petition is accordingly allowed.

October 15, 2020
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(ALKA SARIN)
JUDGE

NOTE:

Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No-