

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

CRM-M-38046-2020(O&M)

Date of decision : 03.12.2020

Sunil Kumar and others

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. D.S. Kahlon, Advocate for the petitioners.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

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

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.140 dated 22.11.2019 registered under Sections 325, 323 and 34 of the Indian Penal Code, 1860 at Police Station Division No.2 Pathankot, District Pathankot and all consequential proceedings arising out of the said FIR, on the basis of compromise dated 25.09.2020 (Annexure P-2).

On 18.11.2020, the following order was passed:-

“The petitioners pray for quashing of FIR No.140 dated 22.11.2019, registered under Sections 325, 323 and 34 of IPC (Annexure P-1) at Police Station Division No.2 Pathankot, District Pathankot, and all consequential proceedings, for, the parties have resolved their differences and a compromise dated 25.09.2020 (Annexure P-2) in this

regard has since been effected.

Notice.

Mr. H.S.Sullar, DAG, Punjab accepts notice on behalf of the State and Mr.Manpreet Singh, Advocate for respondent No.2.

The parties are directed to appear before the Illaqua Magistrate/trial Court on 25.11.2020, for getting their statements recorded qua the execution and veracity of the alleged compromise.

The Illaqua Magistrate/trial Court, post recording statements of all the affected parties, shall submit a report on or before the adjourned date.

And shall also furnish the following information:-

(a) Whether there is/are any other accused except the petitioners.

(b) Whether apart from the complainant (respondent No.2), if there is any other aggrieved party.

Adjourned to 03.12.2020.

Reply, if any, on behalf of the State be filed, in the meanwhile.

Report dated 26.11.2020 has been received from the Judicial Magistrate First Class, Pathankot, wherein it has been stated that the parties have got recorded their statements voluntarily and that the compromise is genuine, without any pressure or coercion. The statements of the parties recorded have also been appended along with the report.

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.) 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-dominantly 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 petitioner has also referred to the law laid down by this Court in “**Kulwinder Singh & Ors. Vs. State of Punjab & Anr.**” 2007 (3) RCR (Criminal) 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.140 dated 22.11.2019, registered under Sections 325, 323 and 34 of IPC (Annexure P1) at Police Station Division No.2 Pathankot, District Pathankot as well as all the subsequent proceedings arising there-from, stand quashed.

The petition is accordingly allowed.

03.12.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO