

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

CRM-M-39774-2020

Date of Decision: 01.12.2020

Sunil @ Sunila and others

Petitioners

Versus

State of Haryana and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.S. Tacoria, Advocate for the petitioners.

Ms. Safia Gupta, AAG, Haryana.

Mr. Abhishek Sindhwani, Advocate for the respondent
No. 2/ complainant.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

This is a petition under Section 482 of the Cr.P.C. for quashing of FIR No.106, dated 8th April, 2020 under Sections 353, 333, 307, 188, 186 and 120-B of the Indian Penal Code, 1860, ('IPC') Section 25 of the Arms Act, 1959 and Section 51 of the Disaster Management Act, 2005 registered at Police Station Sadar, Jind. The quashing is sought on the basis of compromise arrived at between the parties on 17th November, 2020. The annexures to the

petition are the FIR, copy of compromise, affidavit of the

complainant supporting the compromise and copy of Aadhaar Card.

The FIR was at the instance of Deepak. A barricade was erected near Arya Vidhya Mandir School on Behbalpur Road at Ghimana. At about 3-4 P.M. on 07.04.2020, Sandeep and Deepak resident of village Ghimana came on a motorcycle, they were not wearing the masks and were wandering without any reason. The complainant and Manjeet asked them about their movement and non wearing of masks as there was pandemic situation. They threatened that in case they are stopped, the complainant would be shot down. On the same day at about 9:00 P.M., a Splendor motorcycle driven by Manjeet came at the barricade, Sunil @ Sunila was pillion rider. The motorcyclists asked the complainant as to why Sandeep and Deepak were stopped. Sunil @ Sunila fired a shot with the pistol, the bullet hit the complainant on left corner of the chest. The complainant fell down, thinking that he is dead, the motorcyclists fled the scene. They also fired shorts in front of house of Amit.

Learned counsel for the petitioner submits that both the parties are resident of same village and are having common ancestors, they have compromised the matter, hence FIR should be quashed. He further submits that there is a bleak chance of conviction and trial would be a futile exercise. He relies upon the decision of the Supreme Court in ***Narinder Singh and others v. State of Punjab and another, 2014 (6) SCC 466.***

Learned State counsel opposes the quashing of FIR. It is stated that complainant was shot on the left side of the chest. The complainant was shot at as he asked one Sandeep and Deepak to

follow the restrictions imposed due to Covid-19 situation.

Learned counsel for the complainant submits that the matter has been compromised, he has no objection if the FIR is quashed.

The glaring fact is that merely asking for wearing the masks or to restrict the movement due to pandemic was good enough reason for using a fire arm. The injury was inflicted on left side of the chest of the complainant. After almost five hours from stopping of Sandeep and Deepak at the barricade, the firing incident took place, it was a planned attack and not a reaction at the spur of the moment.

It is not merely a dispute between two individuals but an offence against the society. It would be important to note that entire country is still fighting with the pandemic and cooperation of each and every citizen is necessary. The petitioner not only made an attempt on the life of the complainant but endangered lives of other by violating pandemic restrictions. The person who was lending his duties to fight with pandemic (covid warrior) was attacked with a fire arm.

The contention of learned counsel for the petitioner that in view of compromise there is bleak chance of conviction, cannot be a sole consideration for quashing. The FIR cannot be mechanically quashed on the basis of the compromise.

The Supreme Court in ***The State of Madhya Pradesh v. Dhruv Gurjar and another, 2019 (5) SCC 570***, held as under:-

“18.1 Therefore, the said decision may be applicable in a case which has its origin in the civil

dispute between the parties; the parties have resolved the dispute; that the offence is not against the society at large and/or the same may not have social impact; the dispute is a family/matrimonial dispute etc. The aforesaid decision may not be applicable in a case where the offences alleged are very serious and grave offences, having a social impact like offences under Section 307 IPC and 25/27 of the Arms Act etc. Therefore, without proper application of mind to the relevant facts and circumstances, in our view, the High Court has materially erred in mechanically quashing the respective FIRs, by observing that in view of the compromise, there are no chances of recording conviction and/or the further trial would be an exercise in futility.”

The reliance on **Narinder Singh** (*supra*) does not enhance the case of the petitioner. Para 31 of the judgment is reproduced below:-

“31. 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:

(I) 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.

(II) 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.

(III) Such a power is not 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 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.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is 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 later 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.

(VII) 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 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.”

In Sub Clause VI of Para 31 reproduced above, it is held that offences under Section 307 fall in category of serious and heinous offences and are to be treated as offences against the Society and not against the individuals alone.

The Supreme Court in **State of Madhya Pradesh v.**

Laxmi Narayan and others, 2019 (5) SCC 688, considering its

earlier decision in case of **Narinder Singh (supra)** held as under:-

“13(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;”

In **Laxmi Narayan's case (supra)**, the order of the High

Court quashing the FIR in Section 307 of IPC on the basis of compromise was set aside considering that investigation was still in progress and there was use of fire arm.

In other criminal appeal disposed of in the above decision, it was held :-

“So far as Criminal Appeal arising out of SLP 10324/2018 is concerned, by the impugned judgment and order, the High Court has quashed the criminal proceedings for the offences punishable under Sections 323, 294, 308 & 34 of the IPC, solely on the ground that the accused and the complainant have settled the matter and in view of the decision of this Court in the case of Shiji(supra), there may not be any possibility of recording a conviction against the accused. Offence under Section 308 IPC is a non-compoundable offence. While committing the offence, the accused has used the fire arm. They are also absconding, and in the meantime, they have managed to enter into a compromise with the complainant. Therefore, for the reasons stated above, this appeal is also allowed, the impugned judgment and order dated 28.05.2018 passed by the High Court in Miscellaneous Criminal Case No. 19309/2018 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law.”

Considering the facts of the present case from various angles i.e. whether Section 307 was unnecessarily added; whether there is any injury to the vital or delicate part; what is the nature of weapon used and whether the incident was on spur of the moment; this is not a fit case for invoking powers under Section 482 of

Cr.P.C. to quash the FIR.

This Court can't lose sight of the fact that there is use of fire arm, the injury is on the left side of the chest i.e. few inches away from the heart, Section 307 is invoked as per the facts of the case and not merely for the sake of mentioning it.

Considering use of fire arm, the triggering incident of stopping Sandeep at the barricade around 4:00 P.M. for not wearing the masks and not complying with the restrictions of pandemic and pre-planned attack made after a gap of five hours, no case is made out to exercise the discretionary powers under Section 482 of the Cr.P.C.

The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

1st December, 2020

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |