

CRM-M-53777-2019

In the High Court of Punjab and Haryana at Chandigarh

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Date of Decision: 15.01.2020

Dalip

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Kuldeep Khandelwal, Advocate,
for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

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

HARNARESH SINGH GILL, J. (ORAL)

Reply by way of affidavit of Sh. Subhash Chander, HPS, Deputy Superintendent of Police, City Fatehabad, on behalf of respondent No.1, has been filed in the Court today. The same is taken on record.

The trial of the petitioner in case FIR No.226 dated 18.07.2014, registered at Police Station Bhattu Kalan, District Fatehabad, under Sections 420, 467, 468, 471, 506 and 120-B IPC, has culminated into their conviction under Sections 419, 420, 467, 468 and 471 IPC, and he has been substantively sentenced to undergo rigorous imprisonment for a maximum period of three years and to pay fine. He has challenged the judgment of conviction dated 05.03.2019 and order of sentence dated 06.03.2019 by way

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of an appeal before the learned Sessions Court, Fatehabad During the pendency thereof, it is claimed that the parties have entered into a compromise with the intervention of respectable persons. Compromise-deed dated 22.11.2019 (Annexure P-4), reiterating the factum of compromise, has been placed on record.

Vide order dated 16.12.2019, the parties were directed to be present in the Court.

In compliance thereof, the petitioner and respondent No.2 are present in the Court today. They have been duly identified by their respective counsel.

Respondent No.2 states that the matter has been compromised with the present petitioner, who is none else but his real brother.

The Hon'ble Apex Court in the case of ***Gian Singh Versus State of Punjab and another. 2012(4) RCR (Criminal) 543*** has held as under:-

“48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable Under Section 320 of the Code.

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for

exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power Under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court Under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

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52. to 56 xxx to xxx

“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 personnel in nature and the parties have resolved their entire dispute. In this category of cases, High

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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.”

In **State of Karnataka v. L. Muniswami**, AIR 1977 SC 1489, the Hon'ble Supreme Court has observed that the ends of justice are higher than ends of mere law, though justice has got to be administered according to the laws made by the legislature yet the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

The Larger Bench of this Court in the case of **Kulwinder Singh & Ors. Vs. State of Punjab & Anr.** 2007(3) RCR (Criminal) 1052, while discussing the scope of quashing of prosecution on the basis of compromise, by this Court in exercise of powers under Section 482 Cr.P.C., even in non-compoundable offence(s), has held that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482 Cr.P.C. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even

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in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.

In the case of ***Sube Singh and another vs. State of Haryana and another, 2013(4) RCR (Criminal) 102***, a Division Bench of this Court while dealing with the question, as to whether the criminal proceedings can be quashed in exercise of powers under Section 482 Cr.P.C. even after the accused was found guilty and convicted by the trial court and the matter is sub-judice before the appellate Court, answered the reference in the affirmative. Relying upon the decisions rendered in **Kulwinder Singh** and **Gian Singh** (supra), the Court observed as under:-

“16. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Cr.P.C. with a view of prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non-compoundable offences notwithstanding the bar under Section 320 Cr.P.C. but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.”

It has further been held that:

“20 ... Since there is no statutory embargo against invoking of power under Section 482 Cr.P.C. after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.”

The same view has been reiterated by Hon'ble the Apex Court

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(2) RCR (Criminal) 482.

Adverting to the facts of present case, the parties have mutually settled their dispute and have buried the hatchet. Though as per the procedure, the parties were to be relegated to the learned Appellate Court for recording their respective statements in support of the compromise arrived at between them, yet keeping in view fact that respondent No.2, present in the Court, does not dispute the factum of compromise and further the counsel for the parties state that the petitioner is not a previous convict and has not been declared proclaimed offender, I find that it is a fit case to exercise the powers under Section 482 Cr.P.C. and no useful purpose would be served in allowing the criminal proceedings to continue.

Therefore, the instant petition is allowed. Consequently, FIR No.226 dated 18.07.2014, registered at Police Station Bhattu Kalan, District Fatehabad, under Sections 420, 467, 468, 471, 506 and 120-B IPC, and all the subsequent proceedings arising therefrom, is quashed qua the petitioner, subject to his depositing the costs of Rs.10,000/- with the Government Institute for Blind in the concerned area. The judgment of conviction dated 05.03.2019 and order of sentence dated 06.03.2019 passed by the learned Judicial Magistrate Ist Class, Fatehabad, are set aside.

15.01.2020

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

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