

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-28831-2018
Date of decision : 07.10.2021

Akhil Balda and another

... Petitioners

Versus

State of U.T. Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.R.K.Choudhary, Advocate
for the petitioners.

Mr.Anupam Bansal, Addl.Public Prosecutor
for UT, Chandigarh.

Mr.Sandeep Saini, Advocate
for respondent no.3.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a petition filed under Section 482 of the Cr.P.C. for quashing of FIR No.76 dated 28.03.2016, registered under Sections 323, 452, 506, 34 of IPC at Police Station Sector 39, U.T. Chandigarh as well as all the consequential proceedings arising therefrom including the judgment dated 14.12.2017 passed by the Judicial Magistrate Ist Class, Chandigarh, (Annexure P-2) on the basis of compromise dated 07.05.2018 (Annexure P-3).

On 30.01.2019, a co-ordinate Bench of this Court has passed the following order:-

*“Mr. Gagandeep S. Wasu, APP, UT Chandigarh,
puts in appearance on behalf of the State. Let three*

copies of the petition be supplied to him during the course of the day. Mr. Sandeep Saini, Advocate, puts in appearance and accepts notice on behalf of respondent No.3.

This petition has been filed for quashing of FIR No.76 dated 28.3.2016 on the basis of compromise (Annexure P-3).

The parties are directed to appear before the trial Court/Illaq Magistrate on 27.2.2019 for getting their statements recorded. After recording the statements of the parties, the learned trial Court/Illaq Magistrate shall send a report to this Court as regards genuineness of compromise well before the next date of hearing.

Adjourned to 23.5.2019.”

In pursuance to the said order, the report dated 27.02.2019 has been submitted by the Judicial Magistrate Ist Class, Chandigarh. The relevant part of the report is reproduced hereinbelow:-

“Respected Sir,

Under reference to the said order passed by their Lordship, the statements of parties namely Akhil Balda and Anuj Kumar (accused) and Harpreet Singh (complainant) have been recorded and report is as follows:-

- (i) The statements of the parties are bonafide and are not result of any pressure or coercion etc. in any manner.*
- (ii) The compromise effected between the parties is genuine and valid.*
- (iii) There are two accused and one complainant in this case. They have entered into compromise.*
- (iv) No accused has been declared as proclaimed offender.*

Compromise has been effected between parties voluntarily and without any coercion or undue influence.

That has been so observed after recording their statements in Court as well as after their examination in person.”

A perusal of said report would show that it has been submitted that compromise effected between the parties is voluntarily and without any coercion or undue influence.

Brief facts of the present case are that FIR in question was registered under Section 323, 452, 506, 34 IPC. The allegations as per FIR were that the complainant was a resident of House no.3421, Sector 38-D, Chandigarh and was doing private business. On 27.03.2016, some boys who were residing in House No.3158, adjoining to the house of complainant, were creating nuisance on the road and when the complainant stopped them, a fight took place. After investigation, the petitioners were made as an accused. Vide judgment dated 14.12.2017 passed by the Judicial Magistrate Ist Class, Chandigarh, the petitioners were sentenced. Petitioner Anuj was sentenced as under:-

<i>Under Section(s)</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
<i>452 IPC</i>	<i>One and half years rigorous imprisonment</i>	<i>Rs.500/-</i>	<i>One month simple imprisonment</i>
<i>323 IPC</i>	<i>Six months rigorous imprisonment</i>	<i>Rs.500/-</i>	<i>One month simple imprisonment</i>
<i>506 IPC</i>	<i>Six months rigorous imprisonment</i>	<i>Rs.500/-</i>	<i>One month simple imprisonment</i>

However, accused Akhil is hereby sentenced as under:-

<i>Under Section(s)</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
<i>452 r/w 34 IPC</i>	<i>One year rigorous imprisonment</i>	<i>Rs.500/-</i>	<i>One month simple imprisonment</i>
<i>323 r/w 34 IPC</i>	<i>Three months rigorous imprisonment</i>	<i>--</i>	<i>--</i>
<i>506 r/w 34 IPC</i>	<i>Three months rigorous imprisonment</i>	<i>--</i>	<i>--</i>

The period of custody during inquiry, investigation and trial be set off. Fine paid by convicts. Receipts issued. Attested copies of the judgment be supplied to the convicts free of cost immediately. File be consigned to the records after due compliance.”

Thereafter, on 07.05.2018, a compromise had been effected between the petitioners and respondent no.3 and on the basis of said compromise, present petition has been filed and as has been stated hereinabove, as per the report of Judicial Magistrate Ist Class, Chandigarh, the said compromise is genuine and has been effected voluntarily, without any coercion or undue influence.

Learned counsel for the petitioners has submitted that the compromise is genuine and bonafide and has referred to the judgment of a Co-ordinate Bench of this Court in ***CRM-M-17272-2015 dated 28.01.2016*** titled as “***Ram Parkash and others Vs. State of Punjab and others***” to contend that under similar circumstances, the petition under Section 482 Cr.P.C. was entertained and the FIR with all subsequent proceedings was quashed and even the judgment of conviction was set aside on the basis of compromise.

Learned counsel for the petitioners has also relied upon the latest judgment dated 29.09.2021 of the Hon'ble Supreme Court of India in ***Criminal Appeal no.1489 of 2012*** titled as “***Ramgopal & Anr. vs. The State of Madhya Pradesh***” and connected matter and has prayed that the present petition be allowed.

Learned counsel for the U.T. has opposed the present petition for quashing and submitted that in the present case, the petitioners have already been convicted.

Learned counsel for respondent no.3 has admitted the fact that the matter has been compromised and stated that same is in the best interest of all the persons and would help in bringing out peace and amity between the petitioners and respondent no.3 and their family. He prayed that the present petition be allowed.

This Court has heard learned counsel for the parties.

The Hon'ble Supreme Court of India in ***Ramgopal and Anr.'s*** case (supra) has discussed in detail the power of the High Court under Section 482 Cr.P.C. along with other issues. The relevant portion of said judgment is reproduced hereinbelow:-

2. The prosecution version, arising out of FIR dated 3rd November 2000, Police Station Ambah, Morena, M.P. is that on account of certain monetary dispute, the Appellants abused and assaulted Padam Singh (Complainant). Appellant No.1 is alleged to have struck the Complainant with a pharsa, which resultantly cut off the little finger of his left hand. Appellant No.2 also struck lathi blows on the body of the Complainant. Appellants were thereafter committed for trial under Sections 294, 323 and 326 read with 34 of Indian Penal Code, 1860 (hereinafter, 'IPC') and Section 3 of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989. Upon analyzing the evidence, the Learned Judicial Magistrate(FC), Ambah, convicted the Appellants under Sections 294, 323 and 326 read with 34 IPC with a maximum sentence of three years under Section 326 read with 34 IPC.

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12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal

proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by

this Court in Narinder Singh & Ors. vs. State of Punjab & Ors. and Laxmi Narayan (Supra).

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19. We thus sum up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any ; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

A perusal of the abovesaid judgment would show that it has been held that the extra ordinary power is enjoined upon a High Court under Section 482 Cr.P.C. can be invoked beyond the metes and bounds of Section 320 Cr.P.C. It has further been observed that criminal proceedings involving non henious offences can be annulled irrespective of the fact that trial has already been concluded and appeal stands dismissed against conviction and that handing out punishment is not the sole form of delivering justice. Thus, it goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident.

(*supra*), has allowed the petition under Section 482 Cr.P.C. under similar circumstances. The relevant portion of the said judgment is reproduced hereinbelow:

“Prayer in this petition filed under Section 482 Cr.PC is for quashing of the FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar, on the basis of compromise dated 06.02.2015(Annexure P-4) and all other subsequent proceedings arising therefrom including the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the accused-petitioners, were convicted and sentenced...

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Quashing of the aforesaid FIR and setting aside of the impugned judgment and order of sentence dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, is sought on the basis of compromise dated 06.02.2015 (Annexure P-4), entered into between the parties during the pendency of the appeal before this Court.

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*This Court in the case of **Sube Singh and another Versus State of Haryana and another 2013(4) RCR (Criminal) 102** has considered the compounding of offences at the appellate stage and has observed that even when appeal against the conviction is pending before the Sessions Court and parties entered into a compromise, the High Court is vested unparallel power under Section 482 Cr.PC to quash criminal proceedings at any stage so as to secure the ends of justice and has*

observed as under:-

“15. The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.

*16. As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in **Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) R.C.R. (Criminal) 910 : (2008)5 SCC 794**, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.*

17. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482

Criminal Procedure Code with a view to 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 Criminal Procedure Code 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.

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21. *In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code 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.*

22. *Consequently and for the reasons afore-stated, we allow this petition and set aside the judgement and order dated 16.03.2009 passed in Criminal*

Case No. 425-1 of 2000 of Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise. Resultantly, the appeal preferred by the petitioners against the above-mentioned order dated 16.03.2009 would be rendered infructuous and shall be sodeclared by the first Appellate Court at Hisar.”

*Similarly, in the case of **Baghel Singh Versus State of Punjab 2014(3) RCR (Criminal) 578**, whereby the accused was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for two years, the parties entered into compromise during the pendency of the appeal. This Court while relying upon the judgment of **Lal Chand Versus State of Haryana, 2009 (5) RCR (Criminal) 838** and **Chhota Singh Versus State of Punjab 1997(2) RCR (Criminal) 392** allowed the compounding of offence in respect of offence under Section 326 IPC at the appellate stage with the observation that it will be a starting point in maintaining peace between the parties, such offence can be compounded.*

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Accordingly, FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar and all subsequent proceedings arising therefrom, qua the accused petitioners, are quashed, on the basis of compromise dated 06.02.2015

(Annexure P-4), subject to payment of costs of Rs.25,000/-, to be deposited with the Punjab State Legal Services Authority, Chandigarh.

Consequently, the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, are set aside subject to payment of cost.”

This Court in a judgment dated 09.03.2017 passed in CRR no.390 of 2017 titled as **“Kuldeep Singh vs. Vijay Kumar and another”** has held as under:-

*“Reliance can be placed on **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298 and Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097.** The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

*The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097,** would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.*

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

The revision petition is allowed subject to deposit

*of 15% of the cheque amount as per ratio laid down in **Damodar S. Prabhu's case (supra)** to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”*

Reliance in the abovesaid judgment was also placed upon the judgment of the Hon'ble Supreme Court in **Damodar S. Prabhu's case (supra)** and thus, as per settled law, this Court has the power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

Keeping in view the law laid down in the abovesaid judgment, more so the judgment of the Hon'ble Supreme Court of India in **Ramgopal & Anr's case (supra)**, the relevant parameters for consideration as laid down by the said judgment, would be considered by this Court. Firstly, the occurrence which has been involved in the present petition can be categorized as purely personal / criminal act of private nature. Secondly, the injuries which have been caused are simple in nature and do not appear to exhibit element of mental depravity or commission of an offence of such a serious nature, that quashing the criminal proceedings of such like cases would override public interest. Thirdly, in view of the injuries and the offence, it would be immaterial that the petitioners have been convicted by the Judicial Magistrate Ist Class. Fourthly, the compromise is without any coercion or compulsion and has been entered into willingly and voluntarily as per the report of Judicial Magistrate Ist Class, Chandigarh. Fifthly, the occurrence took place in the year 2016 and there is nothing to show that any untoward incident has taken place after the same. Sixthly, the petitioners although, are permanent residents of Haryana and Saharanpur respectively

residing in Chandigarh and thus, quashing of present proceedings would bring peace and harmony among the parties. Seventhly, the object of administration of the criminal justice system would remain unaffected on acceptance of the said amicable settlement between the parties and /or resultant acquittal of the petitioners.

Thus, keeping in view abovesaid facts and circumstances, this petition is allowed and FIR No.76 dated 28.03.2016, registered under Sections 323, 452, 506, 34 of IPC at Police Station Sector 39, U.T. Chandigarh as well as all the consequential proceedings arising therefrom are quashed, qua the petitioners. The judgment and order of sentence dated 14.12.2017 passed by the Judicial Magistrate Ist Class, Chandigarh, (Annexure P-2) are set aside.

(VIKAS BAHL)
JUDGE

October 07, 2021

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No