

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

(1.)

CRM-37066-2021 in/and
CRM-M-15099-2019 (O&M)
Date of Decision:-09.11.2021

Alok Mishra and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

(2.)

CRM-37362-2021 in/and
CRM-M-15142-2019 (O&M)

Sandip Somany

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Abhinav Sood, Mr. Manav Gupta and
Mr. Sahil Garg, Advocates for the petitioners.

Mr. A.K. Kaundal, DAG, Punjab.

Mr. Gautam Roy (son of the complainant/respondent No.2)
in person.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

**CRM-37066-2021 in CRM-M-15099-2019 &
CRM-37362-2021 in CRM-M-15142-2019**

These are the two applications under Section 482 of Cr.P.C.

jointly filed on behalf of M/s HSIL Limited and Mr. Daljit Roy seeking disposal of the main petitions in terms of the settlement agreement dated 06.07.2021 (Annexure A-1), arrived at between the parties.

For the reasons stated therein and also on the request of the learned counsel for the parties, the applications are allowed and the main cases are taken up on Board today itself for disposal.

Main cases

CRM-M-15099-2019 has been filed by the petitioners therein challenging the summoning order dated 06.02.2019 (Annexure P-1) passed in complaint dated 21.09.2015 (Annexure P-8). A perusal of the complaint as well as the summoning order would show that there were six accused in all, out of which four accused have filed the present CRM-M-15099-2021. Accused Sandip Somany, who is the 5th person who has been made accused has filed CRM-M-15142-2019 challenging the summoning order dated 06.02.2019 and the same complaint as in the other petition dated 22.09.2018 (Annexure P-8). The 6th accused i.e., M/s Hindustan Sanitaryware and Industries Limited (HSIL) was not summoned vide the impugned summoning order.

On 02.04.2019, a Co-ordinate Bench of this Court was pleased to pass the following order:-

“Learned Senior Counsel contends that the complainant had been working as a distributor of company, namely, M/s Hindustan Sanitaryware and Industries Ltd (HSIL) and made a complaint for the first time in the year 2014 regarding some defect in the product being sold through HSIL. The petitioner-Alok Mishra is Managing Director of HSIL. In response to the

said complaint, a clear communication dated 24.04.2014 (Annexure P-9) was sent on behalf of HSIL to the complainant to return the defective material lying with its proprietary firm M/s Royco Industries. However, the material was not returned. The attention of the Court is drawn to the Police report (Annexure P-6) on the complaint given by the complainant, wherein it was recorded that the dispute between both the parties is of money transaction and supplying of inferior goods. It was found to be a dispute of a civil nature.

Attention of the Court is also drawn to the decision dated 27.06.2017 (Annexure P-14) rendered by the Consumer Dispute Redressal Forum, Jalandhar whereby in a complaint filed by one of the consumers, the present complainant (Royco Industries) stood burdened with costs and damages and finding was returned that it was the distributor who failed to return the alleged defective goods to HSIL. The said finding was upheld in the Appellate forum as well.

Learned Senior Counsel for the petitioner has pointed towards the observation of the Magistrate made in impugned summoning order dated 06.02.2019 (Annexure P-1) holding unfair trade practice on the part of the company-HSIL, based upon decision of Consumer Court. According to learned Senior Counsel, this observation is factually incorrect and contrary to the record. According to him, the impugned complaint dated 22.09.2015 (Annexure P-8) has concealed the material facts

and therefore, the prosecution of petitioner(s) is nothing, but an abuse of process of law.

Notice of motion for 15.05.2019.

Proceedings before the trial Court shall remain stayed.

A photocopy of this order be placed on the file of connected case.”

During the pendency of the case, the matter has been compromised in terms of the settlement agreement dated 06.07.2021 (Annexure A-1) arrived at between the parties. Learned counsel for the petitioner has submitted that in the present case, the entire dispute of the petitioners and also the Company, M/s HSIL Limited with the complainant Daljit Roy has been settled and a detailed settlement deed has been prepared. The relevant portion of the said settlement agreement dated 06.07.2021 (Annexure A-1) is reproduced hereinbelow:-

“SETTLEMENT AGREEMENT”

This Settlement Agreement is entered into at Gurugram, Haryana on this 6th day of July, 2021 by and between:

M/s. HSIL LIMITED (HSIL) & M/s. SOMANY HOME INNOVATION LIMITED (SHIL), both being companies incorporated under the provisions of the Companies Act, 1956, (Now 2013) having their registered office at 2, Red Cross Place, Kolkata – 700001, HSIL being represented by its authorised signatory, Mr. Vijay Kumar being duly authorised by board resolution dated 25.06.2021 & SHIL being represented by its authorised signatory, Mr. Vijay Kumar being duly authorised by board resolution dated 05.04.2021. The copies of the Board Resolutions both dated

*25.06.2021 & 05.04.2021 respectively are annexed herewith and marked as **ANNEXURE-A**. [hereinafter jointly referred to as the 'FIRST PARTY' which expression shall, unless repugnant to the context, shall mean and include its Directors, employees, agents, representatives, successors and permitted assigns, etc.].*

AND

***MR. DALJIT ROY**, Sole Proprietor of M/s Royco Industries, having office at Nakodar Road, Jalandhar, [hereinafter referred to as the 'SECOND PARTY' which expression shall, unless repugnant to the context, shall mean and include its agents, representatives, successors and permitted assigns, etc.].*

[collectively referred to as 'THE PARTIES']

NOW THEREFORE IN CONSIDERATION OF THE MUTUALLY AGREED TERMS SET FORTH, THE PARTIES HERETO ACCEPT AND WITNESS THE TERMS AND CONDITIONS OF THIS SETTLEMENT AGREEMENT.

- 1. The First Party undertakes to buy-back all the goods/products sold to the Second Party for a lump sum consideration of an amount of Rs. 25,00,000/- (Rupees Twenty-Five Lacs only) to be paid by the First Party to the Second Party.*
- 2. That in furtherance to the aforesaid agreed amount, a sum of Rs. 12,50,000/- (Rupees Twelve Lacs Fifty Thousand Only) is paid at the time of execution of the instant Settlement Agreement vide Cheque bearing No. '006823' for an amount of Rs. 12,50,000/- (Rupees Twelve Lacs Fifty Thousand Only) drawn on HDFC Bank, KG Marg, New Delhi dated 05.07.2021, the receipt of which is hereby*

*acknowledged by the Second Party. A copy of the aforesaid cheque is annexed along with the instant Settlement Agreement and is marked as **ANNEXURE-B.***

3. *That for the remaining amount of Rs. 12,50,000/- (Rupees Twelve Lacs Fifty Thousand Only), the same shall be paid immediately after all the cases pending between the parties as detailed above are withdrawn/quashed/closed in terms of the instant Settlement Agreement.*
4. *The Second Party agrees and undertakes to withdraw the following cases instituted against the Second Party and its employees within a period of 30 (thirty) days from the date of execution of the instant Settlement Agreement or subject to the permission of Hon’ble Courts:*

CASES FILED BY SECOND PARTY				
S. No.	Case Title	Case No.	Details of Case	Forum
1.	<i>Daljit Roy v. Sandeep Somany and Ors.</i>	<i>CC/2500/2015</i>	<i>Criminal Complaint</i>	<i>JMIC, Jalandhar</i>
2.	<i>Daljit Roy v. HSIL Ltd.</i>	<i>CS/528/2017</i>	<i>Civil Suit</i>	<i>Civil Judge, Jalandhar</i>
3.	<i>Daljit Roy v. Alok Mishra (Vice President of Kitchen Appliances Department of the First Party)</i>	<i>CRM/1422/2019</i>	<i>Application under Section 340 Cr.P.C.</i>	<i>JMIC, Jalandhar</i>
4.	<i>Daljit Roy v. Sandeep Somany</i>	<i>CRM/1421/2019</i>	<i>Application under Section 340 Cr.P.C.</i>	<i>JMIC, Jalandhar</i>
5.	<i>Akhil Bharat Grahak Panchayat V/s HSIL</i>	<i>CS/940/2019</i>	<i>Civil Suit</i>	<i>Civil Judge, Jalandhar</i>

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	<i>Limited (instituted at the behest of Second Party)</i>			
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5. *That the Second Party specifically undertakes that it shall ensure that that the civil suit titled as Akhil Bharat Grahak Panchayat v. HSIL Ltd., being CS/940/2019, [mentioned at Serial No.5 in the table above] pending before the Court of Sh. Deepal Singh Chinna, Civil Judge, Junior Division – 2, Jalandhar, Punjab, is withdrawn in terms of the instant Settlement Agreement.*
6. *The First Party agrees to withdraw the case titled as Alok Mishra V/s Daljit Roy being CRM/1535/2019 instituted against the Second Party within a period of 30 (thirty) days from the date of execution of the instant Settlement Agreement.*
7. *The Second Party undertakes and agrees to move a joint application, duly supported by a notarized affidavit, in CRM-M-15099-2019 and CRM-M-15142-2019, pending before the Hon'ble High Court of Punjab & Haryana, within a period of 30 (thirty) days from the execution of the present Settlement Agreement intimating the factum of instant compromise between the parties and settlement of all the disputes, and thereby seek Quashing/setting-aside of the summoning Order dated 06.02.2019 passed by Ld. JMIC, Jalandhar in C.R.M No. 2500/2015 and the entire criminal proceedings arising from C.R.M. No. 2500 of 2015.*
8. *The Second Party also undertakes to render all co-operation and help including but not limited to appearing before the Hon'ble High Court of Punjab & Haryana/ Jalandhar District Court/for making the statement to the effect that it has arrived at a compromise/settlement*

and voluntarily wishes to get all the criminal proceedings arising from C.R.M. No. 2500 of 2015 quashed/set aside.

9. *The Second Party agrees that upon the execution of the obligations under the present Settlement Agreement, it shall have no claim whatsoever against the First Party (including Somany Impresa Group Companies) and all its claims shall stand fully satisfied and all the pending civil/criminal cases whether instituted directly or indirectly shall be deemed to be dismissed as withdrawn.*
10. *The Parties hereby agree that each one of the Parties to the Settlement Agreement will extend their utmost co-operation and assistance for fulfilment of all the objectives of the present Settlement Agreement and each one of the Party to the Agreement hereby undertake to each and every step required for full and complete execution of the present Settlement Agreement.*
11. *The Parties to the present Settlement Agreement assure/ undertake to not raise any dispute or claim against each other or against any employee, stakeholder, Director, etc. of the First Party (including Somany Impresa Group Companies) in future, whether directly or indirectly, in any manner whatsoever.*
12. *The Parties to the present Settlement Agreement further ensure/ confirm that there is no dispute/ litigation/ complaint, other than the ones mentioned above, pending between the parties. If any such dispute/ litigation/ complaint is discovered at a later stage, the same shall be deemed to be unconditionally withdrawn.*
13. *The present Settlement Agreement has been voluntarily signed and executed by the Parties, without any force, coercion, fraud, undue influence from any quarters whatsoever.*

14. *The Parties hereby agree that the present Settlement Agreement constitutes the complete understanding and arrangement between the parties and any earlier understanding or proposal exchanged between the parties will have no bearing between the parties.*
15. *The Parties hereby agree that any amendment to the present Settlement Agreement will have to be in a written document and duly signed by all the parties to the present Settlement Agreement.*
16. *The Parties to the present Settlement Agreement hereby undertake to abide by the terms and conditions of the present Settlement Agreement.*

IN WITNESS WHEREOF parties have put their respective hands together on this **6st Day of July 2021;**

Signed and delivered on behalf of:-

For First Part (HSIL & SHIL)

For Second Party (Mr. Daljit Roy, Sole Proprietor of M/s. Royco Industries)

Sd/-

Sd/-

Name: Vijay Kumar

Name: Daljit Roy

Witnesses:

- 1. Mahesh Kumar (Sd/-)*
- 2. Gautam Roy (Sd/-)''*

A perusal of the above settlement agreement would show that the parties have decided to finish the entire litigation pending between them and in paragraph 7, it has been specifically noted that as far as the present two cases are concerned, a joint application supported by an affidavit would be filed, bringing on record the present settlement agreement, with a prayer for quashing/setting aside the summoning order and it has also been stated

in paragraphs 8 and 9 that the second party i.e. respondent No.2/complainant shall render all cooperation and help in getting the present petitions allowed and also for the quashing of the impugned complaint and the summoning order. It is further stated by respondent No.2 that no claim whatsoever of the respondent No.2 is left against the first party and the settlement is stated to have been signed voluntarily without any force, coercion, fraud and undue influence from any quarters whatsoever.

Mr. Gautam Roy has appeared through video conferencing and has stated that Sh. Daljit Roy (i.e. the complainant/respondent No.2) is his father and in fact the said Gautam Roy is also a signatory to the settlement agreement reproduced hereinabove. Mr. Gautam Roy has stated that his father Mr. Daljit Roy has also signed the affidavit placed along with the present joint application in which Mr. Daljit Roy has specifically stated that the contents of the same have been read over and explained to him (the deponent) and he has signed it after admitting the same to be true. The relevant portion of the said affidavit dated 25.08.2021 is reproduced hereinbelow:-

“IN THE MATTER OF :

ALOK MISHRA & ORS.

...PETITIONERS

VERSUS

STATE OF PUNJAB & ANR.

...RESPONDENTS

AFFIDAVIT OF Mr. Daljit Roy, Proprietor, M/s Royco

Industries, Nakodar Road, Jalandhar.

I, the above named deponent do hereby solemnly affirm

and declare as under:-

1. That the accompanying Application has been drafted as per instructions of the deponent and the contents of the Application have been read over and explained to the deponent and he has signed it by admitting the same to be true and correct of his knowledge.

2. That the contents of para of the Application are true and correct to my knowledge.

CHANDIGARH
Dated: 25.08.2021

Sd/-
DEPONENT
Respondent -2

VERIFICATION

Verified that the contents of above said affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therein.

CHANDIGARH
Dated: 25.08.2021.

Sd/-
DEPONENT
Respondent-2"

Mr. Gautam Roy has further submitted that the settlement agreement dated 06.07.2021 (Annexure A-1) has been entered into without any pressure and undue influence and the same is genuine and bona fide. It is submitted that the father Daljit Roy is a very old person and, thus, could not appear personally through video conferencing but has duly authorized his son i.e. Gautam Roy to appear on his behalf. Mr. Gautam Roy has further stated that the affidavit of Daljit Roy has also been signed by him without any pressure and undue influence and is genuine and bona fide.

Mr. Gautam Roy has further referred to page 47 of Annexure P-1 to highlight the fact that he has been shown as CW1, being the attorney of the complainant. The relevant portion i.e. paragraph 3 of the said summoning order (Annexure P-1) is reproduced hereinbelow:-

“3. In, preliminary evidence, the complainant examined the following witnesses and closed his evidence.

<i>No. of Witnesses</i>	<i>Name of Witnesses</i>	<i>Nature of Testimony</i>
<i>CW1</i>	<i>Gautam Roy</i>	<i>The Attorney of Complainant</i>
<i>CW2</i>	<i>Chander Dev Singh</i>	<i>Lab Asst.</i>

”

Photocopies of the driving licence and Aadhar Card of Mr. Gautam Roy are taken on record as Mark ‘A’ and Mark ‘B’. A photocopy of the Special Power of Attorney executed by Daljit Roy in the favour of Gautam Roy has been sent via whatsapp and has been taken on record as Mark ‘C’.

This Court has heard the learned counsel for the parties and has perused the file. After perusing the settlement agreement (Annexure A-1), this Court finds that the matter has been amicably settled between the petitioners and the complainant.

In the Full Bench judgment of this Court in **“Kulwinder Singh and others Vs State of Punjab”, 2007 (3) RCR (Criminal) 1052**, it was held that High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court feels that the same is required to prevent the abuse of the process of law or otherwise to secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

Hon'ble the Apex Court in the case of ***“Gian Singh Vs. State of Punjab and another”***, 2012 (4) RCR (Criminal) 543, had also observed that in order to secure the ends of justice or to prevent the abuse of process of Court, inherent power can be used by this Court to quash criminal proceedings in which a compromise has been effected. The relevant portion of para 57 of the said judgment is reproduced hereinbelow:-

“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. XXX---XXX”

Keeping in view the above facts and circumstances, moreso the fact that the present matter has been compromised, CRM-M-15142-2019 and CRM-M-15099-2019 are allowed and accordingly, the impugned summoning order dated 06.02.2019 (Annexure P-1) and criminal complaint dated 22.09.2015 (Annexure P-8) and all consequent proceedings arising therefrom, are set aside/quashed in view of the settlement agreement dated 06.07.2021 (Annexure A-1), qua the petitioners.

Since the main petitions have been decided, pending miscellaneous applications, if any, shall also stand disposed of.

Item No.112 (two cases)

A photocopy of this order be placed on the file of other connected case.

(VIKAS BAHL)
JUDGE

November 09, 2021.
sandeep
Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No