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

**CRM-M No.35289 of 2020(O&M)
Date of Decision: 18.01.2021**

Kulvinder Kaur @ Kulwinder Kaur Petitioner

Vs

State of Punjab and another Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Gitish Bhardwaj, Advocate
for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

Mr. Munish Jhanji, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

The case has been taken up for hearing through video conferencing.

[1]. Petitioner seeks quashing of FIR No.0009 dated 25.01.2020 registered under Sections 406, 420 IPC at Police Station Fatehgarh Sahib, District Fatehgarh Sahib as well as all the subsequent proceedings arising therefrom on the basis of compromise.

[2]. As per allegations in the FIR, the complainant alleged that in order to send her minor daughter Canada, the complainant entered into an agreement with B.S. Group of

Companies on 12.07.2018 and paid Rs.2,86,000/- towards fee of the girl and Rs.23,000/- as consultation fee on 12.07.2018. The said amount was taken by the petitioner and co-accused Sandeep Kaur. As per agreement, if the visa gets rejected by any mean, then the accused will refund the entire amount within 80-90 days through cheque. Sandeep Kaur and petitioner gave three cheques of YES bank in the amount of Rs.2,40,000/-. The daughter of the complainant was not sent abroad despite expiry of one year, nor was the amount returned. The cheques issued to the complainant were dishonoured. With this background, the FIR came to be registered.

[3]. The present petitioner has been filed by Kulvinder Kaur @ Kulwinder Kaur alone without arraying Sandeep Kaur as petitioner No.2.

[4]. Vide order dated 02.09.2020, the parties were directed to appear before the trial Court/Illaq Magistrate for recording their statements in the context of genuineness of the compromise. Thereafter, vide order dated 08.01.2021, the Court has noticed some facts and learned State counsel was directed to verify as to whether BS Group of Companies was arrayed as accused or not. The State was also directed to verify as to whether apart from respondent No.2, there was any other victim or not.

[5]. Learned State counsel on instructions from ASI Neta Singh submits that neither the company was accused in the present case, nor was any further victim of the aforesaid transaction. However, co-accused Sandeep Kaur has not been arrayed as co-petitioner in the present case.

[6]. Learned counsel for the petitioner relied upon **Jayrajsinh Digvijaysinh Rana vs. State of Gujarat and another, 2012 (4) R.C.R. (Criminal) 589** and contended that the criminal proceedings in an FIR can be quashed at the instance of one of the accused on the basis of compromise.

[7]. Learned counsel further relied upon **Parambir Singh Gill Vs. Malkiat Kaur, 2010 (1) R.C.R. (Criminal) 256** and the decision rendered by this Court in **CRM-M No.18632 of 2014** titled '**Ashok Kumar Garg and another Vs. State of Punjab and others**', decided on 07.08.2015, on the aforesaid proposition.

[8]. In compliance of the orders passed by this Court at the motion stage, JMIC Fatehgarh Sahib has submitted the report regarding compromise by endorsing the following facts:-

“Complainant Inderjit Kaur daughter of Late Parwinder Singh resident of house No.402, B Chandigarh road, near Prima Enclave, Pearl Enclave, Ward No.10 Sirhind @ Sirhind, District Fatehgarh Sahib suffered statement that the present case against

accused Sandeep Kaur and Kulwinder Kaur was registered on the basis of her statement vide FIR No.09 dated 25.01.2020 under Sections 406, 420 IPC PS Fatehgarh Sahib. Now, he have compromised the matter with accused Kulwinder Kaur and Sandeep Kaur. Kulwinder Kaur gave her power of attorney to his brother Gurjant Singh. The said compromise has been effected with her is without any pressure, coercion and undue influence and same is genuine one and copy of the same is Ex.C1. She identify her signatures on Ex.C1. There are two accused in the present FIR and one of accused is proclaimed offender. Only FIR is pending in the Hon'ble Court. Now they have no grudge with each other. None of the accused is proclaimed offender in this FIR. She has no objection if in view of the compromise, the abovesaid FIR be quashed.

Similarly Gurjant Singh son of Kashmir Singh resident of village Khurana, Tehsil and District Sangrur power of attorney of accused Kulwinder Kaur @ Kulvinder Kaur daughter of Kashmir Singh resident of village Khurana Tehsil and District Sangrur suffered statement that the present case against accused Sandeep Kaur and Kulwinder Kaur was registered on the basis of statement of complainant namely Inderjit Kaur vide FIR No.09 dated 25.01.2020 under Sections 406, 420 IPC PS Fatehgarh Sahib. Now, she has compromised the matter with the accused Kulwinder Kaur and Sandeep Kaur. Kulwinder Kaur gave her power of attorney to me. The said compromise has been effected with the parties is without any pressure,

coercion and undue influence and same is genuine one and copy of the same is Ex.C1. He filed a case in Hon'ble High Court of Punjab & Haryana as power of attorney of my sister Kulwinder Kaur @ Kulvinder Kaur for quashing the present FIR. There are two accused in the present FIR and none of accused is proclaimed offender. However only one accused namely Kulwinder Kaur has filed petition to quash present FIR in Hon'ble High Court of Punjab & Haryana. No intimation regarding other accused i.e. Sandeep Kaur has been given by her brother namely Gurjant Singh who is power of attorney of other accused Kulwinder Kaur. Only FIR is pending in the Hon'nle Court. Now parties have no grudge with each other. None of the accused is proclaimed offender in this FIR. He has no objection if in view of the compromise, the abovesaid FIR be quashed.

From their statements, it seems that the compromise between the parties i.e. complainant and accused Kulwinder Kaur (no intimation regarding other accused namely Sandeep Kaur) is voluntary and is not the result of any pressure or coercion in any manner. There are two accused in the present FIR and none of accused is proclaimed offender. Only FIR is pending in the Hon'ble Court. Photo copy of statements of complainant Inderjit Kaur daughter of Late Parwinder Singh resident of house No.402, B Chandigarh road, Near Prima Enclave, Pearl Enclave, Ward No.10 Sirhind @ Sirhind, District Fatehgarh Sahib and Gurjant Singh son of Kashmir resident of village Khurana,

Tehsil and District Sangrur power of attorney of accused Kulwinder Kaur @ Kulvinder Kaur daughter of Kashmir Singh resident of village Khurana Tehsil and District Sangrur are enclosed herewith for your honour's kind perusal.

Submitted please.”

[9]. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in **Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47; Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604** and **State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489**, has summed up the controversy in **State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and others, 2003(2) RCR (Crl.) 860 (SC)**. The legal position summed up in the said judgment is in the following manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of

the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the

process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.”

[10]. Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.) 1052** considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised *Ex-Debitia, justitia* to prevent abuse of process of

Court.

[11]. In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of commercial, financial, mercantile and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise.

[12]. In **Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.) 543**, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in the following manner:-

“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-dominatingly 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.”

[13]. Taking into consideration the totality of facts and circumstances, this Court is of the view that the case can be considered for quashing of FIR along with subsequent proceedings arising therefrom on the basis of compromise. Resultantly, FIR No.0009 dated 25.01.2020 registered under Sections 406, 420 IPC at Police Station Fatehgarh Sahib, District Fatehgarh Sahib and all the subsequent proceedings arising therefrom, are hereby quashed *qua* the petitioner only.

[14]. Petition stands disposed of.

18.01.2021

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No