

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

259

**CRM-M-5227-2022
Date of decision: 04.04.2022**

SUKHWINDER KAUR AND OTHERS

... Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Saurabh Arora, Advocate for
for the petitioners.

Mr. Karanbir Singh, AAG, Punjab.

Mr. Bhagwan Das, Advocate
for respondent No.2-complainant.

VINOD S. BHARDWAJ. J.(Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. for quashing of FIR No.60 dated 12.05.2016 (Annexure P-1) under Sections 406 & 420 IPC registered at Police Station Goraya, District Jalandhar (Rural) and all subsequent proceedings arising therefrom on the basis of compromise and also to quash the order dated 19.07.2018 (Annexure P-2) whereby the petitioners No.1 and 2 namely Sukhwinder Kaur and Daljit Kaur, have been declared as proclaimed person.

2. Learned counsel for the petitioners submits that there was a minor altercation amongst the petitioners and respondent No.2 (complainant) resulting in registration of the FIR No.60 dated 12.05.2016 under Sections 406 & 420 IPC registered at Police Station Goraya, District Jalandhar

(Rural) (Annexure P-1) and that with the intervention of the respectables from both the sides, the matter has been settled and amicably resolved. It is further submitted that the compromise amongst the parties was effected on account of free will and without any pressure and coercion.

3. Vide order dated 09.02.2022, the parties were directed to appear before the Illaqa Magistrate to get their statements recorded and the Illaqa Magistrate was further directed to send the report regarding the genuineness of the compromise and to also intimate whether any criminal proceedings against the petitioners are pending.

4. In compliance to the said order, a report from the Judicial Magistrate First Class, Phillaur has been received vide reference No. 1224 dated 16.03.2022. The Judicial Magistrate First Class, Phillaur has reported as under:-

“1. Three persons namely Sukhwinder Kaur daughter of Nirmal Singh, Daljit Kaur wife of Nirmal Singh and Gurwinder Singh son of Nirmal Singh are arrayed as accused in the present FIR”

2. Two accused persons namely Sukhwinder Kaur daughter of Nirmal Singh and Daljit Kaur wife of Nirmal Singh are proclaimed Offender in the present case.

3. The present case is fixed for prosecution evidence.

4. From the statement of the parties i.e. Complainant Jasvir Kaur wife of late Sh. Ajit Singh and Joga Singh son of Surinder Singh (power of attorney holder of accused/petitioner no.1 Sukhwinder Kaur daughter of Nirmal Singh and accused/petitioner no.2 Daljit Kaur wife of Nirmal Singh), accused/petitioner no.3 Gurwinder Singh son of Nirmal Singh, it appears to the Court that the compromise is genuine, voluntary and the same has been effected compromise without

any pressure, coercion, threat and with the free consent of the parties.”

5. The full Bench of this Court in the matter of “**Kulwinder Singh and others versus State of Punjab and another**” reported as **(Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052** has been observed as under:

“ (28) To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

(29) In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and Ors., Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:

“The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.”

(30) The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

(31) No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

(32) The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes

which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

(33) The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even 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.

(34) The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

The legal principles as laid down for quashing of the judgment

were also approved by the Hon'ble Supreme Court in the matter of **Gian Singh Versus State of Punjab and another, (2012) 10 SCC 303**. Still further, the broad principles for exercising the powers under Section 482 were summarized by the Hon'ble Supreme Court in the matter of “**Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others versus State of Gujarat and another” (2017) 9 SCC 641**, the same are extracted as under:

16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16.8 Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or mis-demeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

7. It is evident that in view of the amicable resolution of the issues amongst the parties, no useful purpose would be served by continuation of the

proceedings. The furtherance of the proceedings is likely to be a waste of judicial time and there appears to be no chances of conviction.

8. The Hon'ble Supreme Court in the matter of **"Ramgopal and another versus State of Madhya Pradesh"** reported as **2021 SCC ONLINE SC 83**, that the matters which can be categorized as personal in nature or in the matters in which the nature of injuries do not exhibit mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest, the Court can quash the FIR in view of the settlement arrived at amongst the parties. The observation of the Hon'ble Supreme Court is extracted as under:

"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.

9. A perusal of the case files shows that the FIR in the instant case had been registered on 12.05.2016 at the instance of Jasvir Kaur against the petitioners who are residing abroad. It was alleged in the said FIR that the complainant was enticed by the accused persons on the pretext of taking

them abroad by entering into fictitious marriage. It was alleged that the accused persons received large sums of money under the said pretext and yet did not fulfill their assurance. It was noticed that petitioner No.1- Sukhwinder Kaur was residing in Ontario (Canada), petitioner No.2 Daljit Kaur is residing in Greece. It has been pointed out that the cancellation report was submitted twice in the said matter and that eventually vide order dated 18.04.2018, the Judicial Magistrate First Class, Phillaur invoked the provision of Section 190(1)(b) of the Cr.P.C. and summons were issued. It is contended that the petitioners No.1 and 2 were residing in Canada and Greece respectively. Yet, report had been made about evading service without ensuring that the petitioners are residing at the address in question. Even in the report of proclamation it was specifically pointed out that the petitioners are residing abroad, yet, no attempt was made to ensure service upon the petitioners. It is thus contended that the proclamation of the petitioners as proclaimed persons is accordingly invalid and liable to be set aside. Attention in support of the said argument was drawn to the various zimini orders in the matter. The said factual aspect has not been controverted by the State.

10. Thus, I am of the opinion that no proper service had been effected upon the petitioners No.1 and 2 and hence the absence of the petitioners before the trial Court cannot be held to be willful and voluntary. The proclamation of the petitioners as proclaimed person is accordingly not based upon correct appreciation of the factum matrix and the order dated 19.07.2018 declaring the petitioners No.1 and 2 as proclaimed persons is accordingly set aside. It is also apparent that the dispute in question is a money dispute which relates to the property. The said dispute cannot be said

to be grossly shocking to the conscience of public at large or that of the Court. The offence in question cannot be termed as invoking public outcry or termed be as heinous and serious. The FIR in question was registered in the year 2016 and the case is still at the stage of cross-examination of prosecution witnesses. The parties have chosen to amicably resolve their differences and give a quietus to the dispute. Besides, the parties seemingly happen to reside in adjacent villages and continuation of the proceedings is only likely to spoil social peace and harmony. Continuation of the proceedings is not likely to advance any substantial interest of justice. No ends of justice will be secured by subjecting the parties to undergo rigours of protracted criminal litigation.

11. Considering the facts of the instant case and noticing the principles laid down by the Apex Court in “Gian Singh Versus State of Punjab and another”, (2012) 10 SCC 303, “Ramgopal and another versus State of Madhya Pradesh” reported as 2021 SCC ONLINE SC 834 and also by the Full Bench of this Court in “Kulwinder Singh and others versus State of Punjab and another”, 2007 (3) RCR (Criminal) 1052, that the dispute involved in the instant case pertains to offence under Sections 406 & 420 IPC which cannot be perceived as falling within the prohibited category or as an offence that is heinous and grossly shocking to the conscience of the Court or having a wide pervasive impact on the social or public order, the instant petition is allowed and the case FIR No.60 dated 12.05.2016 (Annexure P-1) under Sections 406 & 420 IPC registered at Police Station Goraya, District Jalandhar (Rural) and all subsequent proceedings arising therefrom as well as order dated 19.07.2018 (Annexure P-2) **are hereby quashed**, qua the petitioners in light of the compromise. However, the same

would be subject to payment of costs of Rs. 25,000/- by the each petitioner to be deposited with the “**Punjab and Haryana High Court Lawyers Welfare Fund**” within one month from the date of receipt of certified copy of this order.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 04, 2022
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No