

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1354-SB-2004
Date of decision : 15.09.2022

Vijay Kumar and others Appellants

versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Tanu Bedi, Advocate
for the appellants.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (Oral)

Challenge is to the judgment of conviction and order of sentence dated 27.05.2004 passed by Additional Sessions Judge, Rohtak.

2. All the appellants stand convicted for offences punishable under Sections 307 and 452 read with Section 34 IPC. The details of the sentence awarded are as under:-

Section (IPC)	Rigorous Imprisonment	Fine (in Rs.)	In default of payment of fine (rigorous imprisonment)
307 read with Section 34	10 years	20,000/-	2 years
452 read with Section 34	3 years	5,000/-	6 months

3. As per complaint, on 27.04.1997 at 11.00 p.m., accused Vijay and Vinod, both sons of Jai Naraain and Vivek Kumar @ Monu s/o Jai Bhagwan attacked the complainant. Accused Vinod gagged his mouth. Accused Vijay gave him fist and slap blows and he was caught by

accused Monu @ Vivek Kumar. It was further alleged that 4th person namely Wakil gave iron rod blow on his back. He became unconscious and was taken to hospital. MLR Ex.P-A has come on record as per which Inder Singh suffered following injuries:-

“MLR

Name: Inder Singh, 50 years

Alleged assault in Subhash Nagar, Rohtak

On 12.04.1997 night around 10. P.M.

Patient is conscious, oriented.

Injuries:-

1. History of nasal bleeding present. Diffuse swelling over nose present.

[Advice : ENT surgeon's opinion]

2. Upper Right incision tooth missing.

[1st Incision] No Fresh Bleeding Present.

[Advice : Dental surgeon opinion]

3. Complain of pain in left side of chest, tenderness on left side of chest. No external mark of injury present.

[Advice : surgeon opinion]

4. Trial Court found the appellants guilty of having committed offence punishable under Section 307 IPC. Hence this appeal.

5. At the outset, counsel for the appellants brings to the notice of this Court that during the pendency of the instant appeal, matter stands compromised. The compromise attested on 01.07.2004 is part of the record. Alongwith compromise, affidavits of the complainant Inder Singh, that of Jai Bhagwan and Ravinder son of Inder Singh have also been placed on record. On Oath they admit the fact of there being compromise between the parties. The affidavits have been sworn in

before Executive Magistrate, Rohtak on 01.07.2004. Counsel thus submits that during the pendency of the appeal, the parties have compromised and in terms of law laid down in ***Ramgopal and another vs. State of Madhya Pradesh*** reported as ***SCC online SC 834***, this Court while hearing appeal is well within its power to consider the same and quash the FIR exercising powers under Section 482 Cr.P.C. She strenuously disputes the finding w.r.t. the conviction of the appellants under Section 307 IPC. She submits that even if the injuries caused on the person of complainant Inder Singh are held to be grievous as enumerated under Section 320 IPC, there is no allegation that any dangerous weapon was used for causing the same and thus the appellants can at the most be held guilty only for offence punishable under Section 325 IPC. She further submits that the appellants cannot be held guilty of attempt to murder. There was no intention to kill and it was a brawl between the parties it is not a case of assault. She asserts that Section 325 IPC is compoundable with the permission of Court as per Section 320(2) of Cr.P.C. And thus it will be a case for quashing the FIR and proceedings subsequent thereto on the basis of compromise.

6. Mr. Ambavta for State submits that injuries are grievous in nature. However, he does not dispute the fact whether Section 307 IPC will be made out or not is a debatable issue.

7. I have heard counsel for the parties and have gone through the records of the case.

8. Offence under Section 307 IPC is a heinous offence and generally it is to be treated as an offence against the society. The question w.r.t. exercise of power under Section 482 Cr.P.C. in quashing

FIR under Section 307 IPC is a marshy path to tread.

9. Exercise of plenary power of the High Court recognized u/s 482 Cr.P.C. for quashing of the FIR and criminal proceedings on the basis of compromise between the parties i.e. the accused and the complainant/victim has been the subject matter of continuous debate.

10. In case of **B.S. Joshi vs. State of Haryana and another** 2003(4) SCC 675, where the court was dealing with matrimonial dispute between the parties, Apex Court held that High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint. Section 320 of the Code does not affect the powers u/s 482 of the Code. The view was followed in **Nikhil Merchant vs. Central Bureau of Investigation and another**, 2008(9) SCC 677. Accused were facing Charge-sheet u/s 420, 467, 468, 471A IPC r/w Section 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. The FIR along with proceedings were quashed while relying upon the principle of law enunciated in **B.S. Joshi's** case (supra).

11. While dealing with the case of a convict for offence punishable u/s 420 and Section 120-B IPC, Two-Judge Bench of the Supreme Court in the case of **Gian Singh vs. State of Punjab and another**, 2010(15) SCC 118, expressed doubts over the law laid down in the aforesaid judgments passed in **B.S. Joshi's** case (*ibid*) and **Nikhil Merchant's case** (*ibid*). The matter was referred to Larger Bench. Answering the reference, three Judges Bench in **Gian Singh vs. State of Punjab and another**, 2012(10) SCC 303. Apex Court observed as under :

52. 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.

And, held that :-

61. 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 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.

12. It was further held by the Apex Court that, “it cannot be said that cases of B.S. Joshi, Nikhil Merchant and Manoj Sharma were not

correctly decided”.

13. In the matter of Narinder Singh vs. State of Punjab, Single Bench of this Court refused to accept the compromise between the parties in FIR registered for offences punishable u/s 307/324/323/34 IPC and dismissed the petition seeking quashing of the FIR. The appeal was allowed by the Supreme Court vide judgment dated 27th of March, 2014 reported as **2014(6) SCC 466**. Apex Court held that :

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings :

29.1 Power conferred under section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2 When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure :

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental

depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4 On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences under Section 307 I.P.C. would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 I.P.C. in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 I.P.C. is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 I.P.C. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie

analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 I.P.C. is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere

compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 I.P.C. and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

14. In another case of **State of Rajasthan vs. Shambhu Kewat and another, 2014(4) SCC 149** while dealing with the case of persons acquitted of offences punishable u/s 307,323, 325, 427 r/w Section 34 IPC, Apex Court found that High Court erred in acquitting the accused and reversing the order of conviction merely on the basis of compromise. Apex Court held that offence u/s 307 cannot be said to be crime against an individual and held that :-

“15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 Indian Penal Code is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed

against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

16. We are, therefore, inclined to allow this appeal and set aside the judgment of the High Court. The High Court was carried away by the settlement and has not examined the matter on merits, hence, we are inclined to direct the High Court to take back the appeal to its file and decide the appeal on merits. Let the High Court dispose of the appeal within six months. Ordered accordingly.”

15. Finding there a conflict between the aforesaid two decisions rendered by Apex Court in **Narinder Singh's** case (supra) and **Shambhu Kewat's** case (supra) the matter was again referred to Larger Bench. Answering the reference in **State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688** three Judges Bench held that : -

“15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under

section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

16. The next question that arose before Apex Court was in **Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of 2012 decided on 29th of September, 2021)**. Apex Court was seized of the issue :-

i) Whether compromise between the parties can be considered even after conviction in exercise of the power under Section 482 Cr.P.C. where the offence is non-compoundable?

17. Apex Court after considering whole thread of the decisions including those rendered in **Narinder Singh** (supra) and in **Laxmi Narayan** (supra) held that:-

“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., 1973 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 extra-ordinary power under Section 482 Cr.P.C., 1973 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., 1973 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. v. State of Punjab & Ors.*, (2014) 6 SCC 466 and *Laxmi Narayan* (Supra).

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also

accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

15. 16. 17. 18. XXXXXX

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C., 1973 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., 1973 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., 1973. 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."

18. While this debate was going before Apex Court this High Court was also steering through the same waters. In **Dharambir vs. State of Haryana, 2005(3) RCR (Criminal) 426**. Majority view of Two Judges was that : -

"14. For the reasons recorded above, we are of the considered view that there is provision of law nor does Constitution of India confer any power on the High Court to either quash the prosecution or allow the compounding of offences, which are not declared compoundable by the Legislature. The only exception, which can be carved out to this view is on the basis of B.S. Joshi's case (supra),

which judgment pertains to offences arising out of marital disputes so as to enable the spouses to resolve their differences amicably in order to enable them for proceeding with their lives in future.”

19. The aforesaid view was doubted and the matter was referred to Full Bench. Five-Judges Bench in ***Kulwinder Singh & others Vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052*** held as under:-

“25. 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 Criminal Procedure Code. 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"*.

26. In ***Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and others, (1980)1 SCC 63***, 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."

27. 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. No embargo, be in the shape of Section 320(9) of the Criminal Procedure Code, or any other such curtailment, can whittle down the power under Section 482 of the Criminal Procedure Code.

28. 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 Criminal Procedure Code 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 Criminal Procedure Code 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.

29. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Criminal Procedure Code 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 Criminal Procedure Code, in order to prevent the abuse of law and to secure the ends of justice.
30. The power under Section 482 of the Criminal Procedure Code 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 Criminal Procedure Code 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 extraordinary 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."

20. Somewhat similar questions cropped up before the Division Bench of this Court. In **Sube Singh vs. State of Haryana and another**, CRM No. 38140-M of 2011 (O&M) decided on 9.4.2013, Division Bench of this Court framed the following questions :-

“10. From the above-reproduced reference order, the following two questions arise for determination by the larger Bench :-

(1) Whether the power exercisable by the High Court under Section 482 Criminal Procedure Code is controlled by Section 320 Criminal Procedure Code or it can be invoked in an appropriate case even if the offences are not compoundable in nature?

(2) Whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Criminal Procedure Code even after the accused was found guilty and convicted by the trial court though the matter is sub judice before the appellate court?”

The same were answered as under :-

“13. It is indeed now unarguable to say that the power exercisable by the High Court under Section 482 Criminal Procedure Code for the quashing of criminal prosecution is limited or affected by the provision of Section 320 Cr.P.C.

14. We may, however, hasten to add that power of the Court under Section 320 Criminal Procedure Code to “compound” an offence on the basis of compromise between the accused and the victim can be invoked only if the subject offence is compoundable. In other words, power under Section 320 Criminal Procedure Code is not exercisable in relation to a case of non-compoundable offence as ruled by the Hon'ble Supreme Court in a string of decisions including (i) **Surendra Nath Mohanty v. State of Orissa, 1999(2) RCR (Criminal) 683 : (1999)5**

SCC 238; (ii) Bankat v. State of Maharashtra, 2005(1) RCR (Criminal) 306 : (2005)1 SCC 343; and (iii) Gulab Das & Ors. v. State of MP, 2012(1) RCR (Criminal) 220 : 2011(6) Recent Apex Judgments (R.A.J.) 381 : (2011)10 SCC 765.

15. The refusal to invoke power under Section 320 Cr.P.C., 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. 17. 18. 19. 20. XXXXXX

“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 so declared by the first Appellate Court at Hisar.”

21. Thus the proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

- (a) Power u/s 482 Cr.P.C. vested with this Court is not affected by Section 320 of the Code.
- (b) However, wider the power greater the caution.
- (c) The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.
- (d) The said power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.
- (e) Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High Court would not refuse to quash FIR under Section 307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.
- (f) Such exercise at the hands of High Court would be

permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter is still under investigation.

- (g) While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.
- (h) Power under Section 482 can be exercised post conviction as well. In such cases 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 extra-ordinary power under Section 482 Cr.P.C., 1973 would be to secure the ends of justice.**

22. While considering the aforesaid proposition of law w.r.t. Offence punishable under Section 307 IPC coordinate bench of this Court in '*Jagroop Singh and others vs. State of Punjab and others*' reported as **2017 (1) Law Herald 826** held that:

“xx xx xx

In case of quashing of criminal prosecution arising out of offence under Section 307 IPC, following facts are necessary to be considered for arriving at the conclusion i.e.:-

- (i) Whether offence would remain an offence against State/society or it can be diluted, if weapon used is not deadly weapon,
- (ii) Place where occurrence took place is not publicly exposed so as to exhibit action in open

before the society.

(iii) Medical opinion is such that it aggravated with the passage of time and ultimately brought the offence within the fold of 307 IPC, and

(iv) the offence is the outcome of any matrimonial discord between the parties.”

23. The present case when viewed from the prism of the afore-discussed proposition of law especially in the light of para 13 of the judgment rendered by Apex Court in Ram Gopal's case (supra), this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested under Section 482 Cr.P.C to quash the FIR. Though injuries suffered by Inder Singh, have been opined to be grievous in nature but it is matter of record that no dangerous weapon has been used in causing those injuries which does show that it is not a case of mental depravity or the one which can be perceived as threat to public peace. Finding recorded by the trial Court w.r.t. the conviction of the appellants under Section 307 IPC is under serious cloud. At the same time, the Court cannot be oblivious of the fact that the parties to the lis were closely related at one point of time. Inder Singh was brother-in-law of Jai Bhagwan and similarly Vinod and Vijay Kumar were brother-in-law of Jai Bhagwan. Incident took place in 2004 and the parties have now moved ahead. No such incident is reported to have occurred during past more than 18 years. The parties have decided to forget and forgive.

24. It has been repeatedly held by the Apex Court as well as by this Court that wherever the parties decide to bury the hatchet and are ready to reconcile their differences, the same needs to be promoted and the same shall be in the interest of justice until the same is found to be prejudicial to the interest of public at large or to the administration of

justice.

25. Keeping in view the aforesaid facts, the compromise/settlement between the parties is accepted. Complaint under Section 307, 325, 452 read with Section 34 IPC is ordered to be quashed. Judgment passed by the Trial court is ordered to be annulled and the appellants are held to have been acquitted of all the charges qua aforesaid complaint.

26. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

15.09.2022
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes