

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

Sr. No.250

**CRM-M-4166 of 2019 (O&M)
Date of Decision: August 22, 2022**

Sarwan Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Vipin Mahajan, Advocate for the petitioners.

Mr. R.S. Khaira, AAG, Punjab.

Mr. Ketan Chopra, Advocate for
Mr. Vishal Munjal, Advocate
for respondent Nos.2 & 3.

AMAN CHAUDHARY, J.(Oral)

Present petition has been filed for quashing of FIR No.13, dated 23.01.2012, under Sections 323, 324, 326, 148 and 149 IPC, registered at Police Station Tibber, District Gurdaspur and judgment dated 05.02.2018 passed by the Additional Chief Judicial Magistrate, Gurdaspur qua the petitioners and all other consequential proceedings arising therefrom on the basis of the compromise (Annexure P-2).

On 08.02.2019, this Court had passed the following order:-

“Learned counsel for the petitioners contends that during pendency of the appeal against the judgment of conviction and order of sentence dated 05.2.2018 passed by the Additional Chief Judicial Magistrate, Gurdaspur, the parties have arrived at a compromise.

Notice of motion.

At this stage, Mr. Vishal Munjal, Advocate appears and filed power of attorney on behalf of respondents No.2 and 3 and admits the factum of compromise.

Accordingly, the private parties are directed to appear before the Chief Judicial Magistrate, Gurdaspur, on 27.2.2019 for recording

their statements with regard to compromise/settlement. The Chief Judicial Magistrate shall submit a report before this Court on or before the next date of hearing containing the following information :-

1. Number of accused/convict(s) convicted by the trial Court & arrayed as accused in FIR/final report.

2. Whether any accused is proclaimed offender.

3. Whether the compromise is genuine, voluntary and without any coercion or undue influence.

4. Whether the accused/convict(s) are involved in any other case or not.

Adjourned to 29.4.2019.”

Thereafter on 27.03.2019, it was stated that the parties could not be intimated about the date on which parties have to appear before the trial Court to get their statements recorded, an application for further direction to appear before the trial Court was allowed.

On 27.3.2019, this Court had passed the following order:-

“Learned counsel for the applicants/petitioners contends that the parties could not be intimated about the date i.e. 27.02.2019 for appearance before the learned trial Court to get their statements recorded with regard to the compromise relied upon by them.

Notice in the application.

Mr. Harsimar Singh Sita, AAG, Punjab accepts notice on behalf of the State.

Mr. Vishal Munjal, Advocate accepts notice on behalf of the respondents No.2 and 3.

For the reasons mentioned in the application, the same is allowed and the parties are directed to appear before the trial Court on 01.04.2019 to get their statements recorded.”

Pursuant to the aforesaid orders, report dated 04.04.2019 has been received from Additional Chief Judicial Magistrate, Gurdaspur. The relevant part of the said report is as under:-

“As per the statements of the parties, I am of the considered opinion that compromise between the petitioners and respondents No.2 and 3 is genuine, voluntary and without any coercion or undue influence.”

A perusal of the said report reveals that statements of the concerned persons have been recorded in the present case, who have stated that the matter has been settled between the parties and they have no objection in case the FIR in question is quashed. It is stated in the report that there are ten accused persons out of which one accused namely, Maninder Singh @ Happy has been declared as proclaimed offender, and the compromise effected between the parties is genuine and has been arrived at between them without any pressure or coercion. It is also stated in the report that no other proceeding is pending against the petitioners.

Brief facts of the case are that the FIR in question was registered under Sections 323, 324, 341, 148 and 149 IPC on the allegations that on 23.01.2012, at around 11:30 AM, complainant alongwith Subedar Balbir Singh, Harmesh Singh, Amarjit Singh, Jaswinder Singh, residents of Got Pokar were going for casting votes in favour of their party during election process. When they reached near house of Subedar Balbir, then from opposite side, Sarwan Singh armed with Dattar, Kuldip Singh @ Billa armed with Datar, Sukhwinder Singh armed with Datar, Harjit Singh armed with kirpan, Bachittar Singh armed with kirpan, Chanan Singh armed with dang, Happy armed with Dang, Vicky armed with Dang, James Masih @ Ghukar armed with Gandasi, Harbhajan Singh armed with dang were also coming. Then Sarwan Singh, Bachittar Singh and Chanan Singh raised Lalkara to restrain their passage and said that they be taught a lesson for casting votes in favour of Congress Party. In the meantime, Kuldip Singh @

Billa gave blow of datar which hit on State vs Sarwan Singh & others 3 the back of his head, Sukhwinder Singh @ Goga gave blow of datar which hit on the elbow of his left arm and Amarjit Singh came forward to save him, then Harjit Singh gave blow of kirpan which hit on elbow of his right arm. Then he raised rouna "Maar Ditta, Maar Ditta and people of village gathered there and assailants fled away from the spot along with their respective weapons. Motive behind the occurrence was that complainant was earlier in the Akali party and now he has been supporting the Congress party and he is demanding votes for Congress party and due to that grudge, accused persons in their common object caused injuries to him as well as Amarjit Singh. After arranging conveyance, he and Amarjit Singh moved to Civil Hospital for treatment and action be taken against accused persons. Vide judgment dated 05.02.2018 passed by the Additional Chief Judicial Magistrate, Gurdaspur, the petitioners were convicted and sentenced. The relevant para is being reproduced as under: -

"Taking into consideration, all the facts and circumstances of the case and plea taken by convicts on the quantum of sentence, I am of the view that it is a fit case for releasing the convicts on probation under section 4 (1) of Probation of Offender Act, 1958 so, instead of sentencing convicts, thus they are directed to be released on their entering into probationary personal bonds in the sum of Rs.10,000/- each for a period of six months and to appear and receive sentence as and when called upon during such period and in the meantime to keep peace and be of good behaviour and they are also burdened with costs of litigation expenses to the tune of Rs. 500/- each i.e. total Rs.

Four Thousand Five Hundred only. File be consigned to record room and same be taken up on arrest of accused Maninder Singh @ Happy, who was declared proclaimed offender or surrenders himself in the Court.”

On 26.11.2018, a compromise had been effected between the parties and on the basis of said compromise, present petition has been filed and as has been stated hereinabove, as per the report of Additional Chief Judicial Magistrate, Gurdaspur 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 titled as “Ram Parkash and others Vs. State of Punjab and others”, decided on 28.01.2016** 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.

While relying upon the judgment of Hon'ble the Supreme Court in case of **“Jayrajsingh Digvijaysingh Rana vs State of Gujrat and another”, 2012(12) SCC 401**, learned counsel for the petitioners contends that where there is a partial compromise with some of the

accused then also the proceedings against the said accused should be quashed as the same would not even remotely result in conviction of the said accused.

Learned counsel for the State 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.2 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.2. He prayed that the present petition be allowed.

I have heard learned counsel for the parties and have also gone through the case file.

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 sumup 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 heinous 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.

The Coordinate Bench of this Court in ***Ram Parkash's case (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. Nonacceptance 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 petitioners 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 petitioner has 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, Sunam. 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 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 petitioner.

In view of the above, the petition is allowed and FIR No.13, dated 23.01.2012, under Sections 323, 324, 326, 148 and 149 IPC, registered at Police Station Tibber, District Gurdaspur and judgment dated 05.02.2018 passed by the Additional Chief Judicial Magistrate, Gurdaspur qua the petitioners and all other consequential proceedings arising therefrom, are quashed qua the petitioners.

August 22, 2022

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(AMAN CHAUDHARY)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No