

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

CRM-M-7072-2022

Date of decision: 25.08.2022

Kulwinder Pal Singh Sidhu and anotherPetitioners

Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Rahul Sharma, Advocate for the petitioners.

Mr. J.S. Mehndiratta, Addl. AG, Punjab.

Mr. Saqib Ali Khan, Advocate, for respondent No.2.

AMAN CHAUDHARY, J. (ORAL)

Present petition has been filed for quashing of FIR No. 0264 dated 24.12.2019 under Sections 420, 120-B IPC and Section 24 of the Immigration Act, registered at Police Station Dugri, District Police Commissionerate, Ludhiana, and all other consequential proceedings arising therefrom on the basis of the compromise dated 01.10.2021 (Annexure P-2).

On 21.02.2022, this Court had passed the following order:-

“By filing this petition, quashing of FIR No.0264 dated 24.12.2019 under Sections 420, 120-B IPC, 1860 and Section 24 of the Immigration Act, registered at Police Station Dugri, District Police Commissionerate, Ludhiana, has been sought along with all other consequential proceedings arising therefrom, on the basis of compromise.

Notice of motion.

Mr. Amar Ashok Pathak, Addl. A.G., Punjab and Mr. Saqib Ali Khan, Advocate accept notice on behalf of respondents no.1 and 2 respectively.

Parties may appear before learned trial court/Illaq Magistrate concerned on 04.03.2022 or any other date convenient to the said Court and get their statements recorded with regard to compromise. The original compromise shall be produced before the said Court. In the event of their statements being recorded, the trial court will send copies of the same to this Court before the next date of hearing along with its report regarding :-

- (i) genuineness and voluntary nature of compromise;
- (ii) whether all accused/petitioners are appearing before the Court or are on bail; and
- (iii) whether any other proceeding is pending against the accused/ petitioners. Adjourned to 24.05.2022. ”

Pursuant to the aforesaid order, report dated 16/25.04.2022 has been received from the Judicial Magistrate Ist Class, Ludhiana. The relevant paragraph of the said report is as under:-

“ASI Manjit Singh, investigating officer stated that case bearing FIR no. 264 dated 24.12.2019, under Sections 420/120-B of IPC and Section 24 of Immigration Act was registered against accused Kulwinder Pal Singh Sidhu and Bhupinder Kaur Sidhu on the basis of complaint filed by complainant Gurwinder Singh son of Ujjagar Singh. He also submitted that there are only two accused persons namely Kulwinderpal Singh Sidhu and Bhupinder Kaur Sidhu involved in the present case and only one complainant namely Gurwinder Singh. He stated that none of the accused has been declared as

proclaimed offender in this case and no other criminal case is pending against any of the accused except the present case.

IO ASI Manjit Singh again appeared before the Court and suffered a separate statement that neither any supplementary challan has been presented against accused Bhupinder Kaur Sidhu in this case nor she has been declared as proclaimed offender as she has not been arrested till date. He brought to the notice of this court that non-bailable warrants of accused Bhupinder Kaur Sidhu have already been issued, which are pending for 20.04.2022.

It is accordingly submitted that there are only two accused namely Kulwinder Pal Singh Sidhu and Bhupinder Kaur Sidhu involved in this case. That accused Bhupinder Kaur Sidhu is not appearing before the court and non-bailable warrant against her have already been issued for 20.04.2022. Only one complainant/aggrieved person namely Gurwinder Singh is involved in the present case. It is further submitted that no other proceedings are pending against the accused.

On the basis of statements made by the parties appearing before me, the compromise on the face of it appears to be genuine one having been arrived at by the parties with free will without any pressure or coercion. There is nothing on the record to doubt the genuineness of the compromise so arrived at between the parties.

With these submissions, the report with regard to the compromise is being submitted accordingly for the kind perusal of the Hon'ble High Court.

Accordingly report is being submitted please”.

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 two accused persons namely Kulwinder Pal Singh Sidhu and Bhupinder Kaur Sidhu. Kulwinder Pal Singh, accused (petitioner No. 1), in his statement has submitted that he and his wife Bhupinder Kaur Sidhu, petitioner No. 2 are the only accused in this case and he is appearing as General Power of Attorney Holder of Bhupinder Kaur Sidhu-accused (petitioner No.2). They both are on bail and there is no other criminal case pending against them except this present case. It is also stated in the report that none of the accused is declared as proclaimed offender and no other case has been registered against the accused persons except the FIR in question.

I have heard learned counsel for the parties.

With respect to Section 482 Cr. P.C. being filed GPA

Learned counsel for the petitioner relies upon an order dated 01.06.2018, in CRM-M-6890-2013, Mangal Das Gautam and another vs. State of Haryana and another, whereby the Division Bench of this Court held as under: -

38. In the light of the above observations, it is held that a petition under Section 482 of Cr.P.C. can be filed by a Power of Attorney holder. As regards the maintainability thereof, it would dependent upon the facts and circumstances of each case as also with regard to the validity of the said Power of Attorney and the powers conferred therein. It requires to be mentioned here that there is no statutory bar provided by the legislature in the

Cr.P.C. relating to filing or continuing of a criminal matter through a Power of Attorney holder. The Court would generally insist that the petition under Section 482 of Cr.P.C. for quashing of the FIR or a criminal complaint as also the consequential proceedings arising therefrom be filed through the accused person himself but this cannot be and should not be laid down as a hard and fast rule keeping in view the statutory mandate which by nomenclature, description and discretionary nature of powers conferred on the High Court requires it to be kept flexible. This is better left to be considered and decided by the Court dealing with the particular case in the facts and circumstances of each case as it would be impossible to envisage and think of all the circumstances in which the Court may require and like to exercise its extraordinary jurisdiction and powers as conferred under Section 482 of Cr.P.C.

39. *We would also like to point out that filing of petition under Section 482 of Cr.P.C. is an exception to general rule of criminal law that in criminal proceedings, either the accused should be available before the Court in custody or on bail, unless granted exemption. We hold that any petition under Section 482 of Cr.P.C. through Power of Attorney should contain special reason for non-filing of petition by accused himself or herself to enable the High Court to consider and allow the same. But if, at any stage, the High Court finds that the petition has been filed by accused through Power of Attorney with some oblique motive or the same is violative of any statute or law or is an act of abuse of process of the Court, the Court would have wide discretion to dismiss the petition filed through Power of Attorney. The High Court will have inherent power to give an opportunity to the accused to personally file the petition.*

40. *The view taken in the case of Amit Ahuja's case (supra) cannot be said to be correct for the reasons detailed above.*

41. *The questions in Reference are, thus, answered as follows:-*

- i) Criminal proceedings under Section 482 of Cr.P.C. can be filed by an accused through an Attorney but the circumstances under which it can be so filed and would be maintainable would be dependent upon various factors including facts and circumstances of that particular case, which is better left at the wisdom and discretion of the Court.*
- ii) In the light of the answer to Question No.1 mentioned above, Question No.2 does not survive to be answered as it was dependent upon the answer of Question No.1 and an offshoot of the question in a particular eventuality”.*

This Court finds that in this petition also Kulwinder Pal Singh Sidhu, petitioner No. 1, who is the husband of Bhupinder Kaur, petitioner No. 2, was authorized to enter into compromise through her General Power of Attorney holder. Hence, in the light of the observations made in Mangal Das Gautam's case (supra), the present petition is maintainable at the hands of the General Power of Attorney holder for purpose of quashing of FIR based on compromise.

After perusing the report submitted by the trial Court, this Court finds that the matter has been amicably settled between the petitioners and the complainant. Since the matter has been settled and the parties have decided to live in peace, this Court is of the view that in order to secure the ends of justice, the criminal proceedings deserve to be quashed.

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

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

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code.

Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. XXX---XXX”

In view of the above, the petition is allowed and FIR No. 0264 dated 24.12.2019 under Sections 420, 120-B IPC and Section 24 of the Immigration Act, registered at Police Station Dugri, District Police Commissionerate, Ludhiana, and all other consequential proceedings arising therefrom, are quashed qua the petitioners.

25.08.2022
preeti

(AMAN CHAUDHARY)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No