

260

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

(1)

CRM-M-6335-2022

Date of decision: 22.03.2022

MUKHTAR SINGH AND ORS

...Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

(2)

CRM-M-6355-2022

GURPINDER SINGH @ BHINDER BULLET AND ORS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. B.B.S. Randhawa, Advocate
for the petitioners in CRM-M-6335-2022 and
for respondents No. 2 to 4 in CRM-M-6355-2022

Mr. Manu Loona, Advocate for
Ms. Mandeep Kaur, Advocate
the petitioners in CRM-M-6355-2022 and
for respondent No.2 in CRM-M-6335-2022

Mr. Bhupender Beniwal, AAG, Punjab.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. This common order shall dispose of both above petitions, as, they arise out of the main version, as, averred in the FIR, and, its cross version, as, carried in the DDR.

2. These petitions have been filed under Section 482 of the Cr.P.C., by the petitioners seeking quashing of FIR No.0015, dated 05.02.2017, constituting therein offences, under Sections 323, 324, 341, 506, 148, 149 of the IPC, 1860 (Section 326 of IPC added lateron) lodged at Police Station Sadar Batala, Police

District Batala, and, of cross case registered vide GD No. 019 dated 19.02.2017,

lodged under Sections 323, 324, 326, 148, 149 of the IPC, 1860, and, also of all consequential proceedings arising therefrom, hence on the basis of common compromise (Annexure P-2) arrived at between the parties.

3. When both the instant petitions came up before this Court on 14.02.2022, this Court, made the hereinafter extracted order(s).

CRM-M-6335-2022

"1. Notice of motion.

2. Mr. Bhupender Beniwal, AAG, Punjab, waives service of notice on behalf of respondent No. 1.

3. Ms. Mandeep Kaur, Advocate puts appearance on behalf of respondent No. 2, and, waives service of notice on behalf of respondent No.2, and, is directed to file her Power of Attorney in the Registry of this Court within a week.

4. Before proceeding to quash the cross-version i.e. GD No. 019, dated 19.02.2017, as arisen out of FIR No. 0015 dated 05.02.2017, at Police Station Sadar Batala, Police District Batala, it is deemed appropriate to make directions upon the Illaqa Magistrate concerned to, after summoning the petitioners, and, respondent No. 2, and, after his recording their respective testifications, with respect to the voluntariness, and also, with respect to the authenticity of the compromise drawn amongst them, as embodied in Annexure P-2, to make a report with respect to the compromise (supra).

5. The learned Magistrate is also directed to disclose in his report, (a) whether after completion of investigation, report under Section 173 Cr.P.C. has been filed; (b) whether charge has been drawn against the accused; and (c) whether the prosecution evidence has commenced; (d) whether the compromise drawn amongst the parties concerned, covers all the concerned, in the penal transaction concerned.

6. The afore made report be ensured to be transmitted to this Court within three weeks.

7. For the afore purpose, list on 22.03.2022."

CRM-M-6355-2022

- “1. Notice of motion.
2. Mr. Bhupender Beniwal, AAG, Punjab, waives service of notice on behalf of respondent No. 1.
3. Mr. B.B.S. Randhawa, Advocate puts appearance on behalf of respondents No. 2 to 4, and, waives service of notice on behalf of respondents No.2 to 4, and, is directed to file his Power of Attorney in the Registry of this Court within a week.
4. Before proceeding to quash FIR No. 0015 dated 05.02.2017, at Police Station Sadar Batala, Police District Batala, it is deemed appropriate to make directions upon the Illaqa Magistrate concerned to, after summoning the petitioners, and, respondents No. 2 to 4, and, after his recording their respective testifications, with respect to the voluntariness, and also, with respect to the authenticity of the compromise drawn amongst them, as embodied in Annexure P-2, to make a report with respect to the compromise (*supra*).
5. The learned Magistrate is also directed to disclose in his report, (a) whether after completion of investigation, report under Section 173 Cr.P.C. has been filed; (b) whether charge has been drawn against the accused; and (c) whether the prosecution evidence has commenced; (d) whether the compromise drawn amongst the parties concerned, covers all the concerned, in the penal transaction concerned.
6. The afore made report be ensured to be transmitted to this Court within three weeks.
7. For the afore purpose, list on 22.03.2022.”

4. The afore made orders by this Court on 14.02.2022, have been complied with by the learned Magistrate concerned, and, the elicited report has been placed on record. A perusal of the reports, transmitted to this Court, by the learned Magistrate concerned, reveals that the settlement(s)/compromise(s), arrived at *inter se* the petitioners, and, the respondent(s)-complainant, is a sequel of both, being *ad idem* qua it, besides the compromise(s)/settlement(s) being a

sequel of no pressure or coercion, being exercised upon each other. Moreover, the compromise is compositely drawn, and, thereons exist the signatures of all concerned, in the penal transactions concerned. Therefore, the learned Magistrate has reported that the settlement(s)/compromise(s), depended upon by the petitioners, for seeking quashing of the FIR (supra), and, for same of DDR are both voluntary, and, also free from vices of duress, and, or of compulsion, being exercised upon each other, besides are genuine.

5. Today, the learned counsel appearing for the State of Punjab, has contended before this Court, that the relief, as claimed by the petitioners, in both the petitions, cannot be granted, as some of the offences constituted against the accused-petitioners concerned, inasmuch as, those under Sections 324, 326, 148, 149 of the IPC, are non-compoundable.

6. However, for the reasons to be assigned hereinafter, the afore prayer, as made by the learned State counsel, cannot be accepted by this Court. The pre-eminent reason for dispelling the vigour of afore made argument, is rested, upon the factum of also a statement, being made before this Court, by the learned counsel for the petitioners, that after presentation of a report under Section 173 Cr.P.C., against the accused, in FIR, and, in DDR though a charge becoming framed, but the prosecution evidence has yet not commenced.

7. The effect of the afore statement, as made with extreme vehemence by the learned counsel for the petitioners, and, also the effect of the statement made by the learned counsel appearing for the State of Punjab, is that the relevant parameters as encapsulated in a verdict of the Hon'ble Apex Court, rendered in case titled as, ***Gian Singh versus State of Punjab and another 2012 (4) RCR (Criminal) 543***, inasmuch as a postulate/occurring therein, that the inherent power under Section 482 Cr.P.C., hence for compounding the relevant

offence, through recourse being made to the provisions of Section 482 Cr.P.C., as vested in the High Court, for quashing of criminal proceedings, as/of FIR or complaint, rather being distinct and different from the power given to a criminal Court, being enjoined to become tested vis-a-vis the facts in hand, for apposite application thereon. However, it has also been held therein, the afore power vested in the High Court, is of the widest plenitude, with no statutory limitation, being placed thereon, yet it has to be exercised to secure the ends of justice, and, to prevent the abuse of process of any Court. Though no straightjacket formula, has been contemplated therein, for recourse being made to the mandate of Section 482 Cr.P.C., hence for quashing of an FIR, or criminal proceedings or complaint, yet the essential rubric viz-a-viz its valid exercising, is comprised in the principle, that if the accused and the complainant rather enter into a valid *ad idem* settlement, and, when thereupon the conviction of the accused becomes remote and bleak. Consequently, it has been mandated, that unless the offence sought to be quashed, through exercising of the power vested under Section 482 Cr.P.C., are not serious and heinous, inasmuch as the afore, do not embody offences appertaining to murder, rape, dacoity etc., and, or when the offences are in relation to special statutes like Prevention of Corruption Act or offences committed by public servants, while working in that capacity, thereupon it can be permissibly exercised. However, upon evident existences of embargos (supra), spelt in the verdict (supra), thereupon, the High Courts are barred, through recouring the mandate of Section 482 Cr.P.C., hence, to quash the FIR or quash the criminal proceedings appertaining to serious/heinous offences (supra).

8. It is apt to extract the relevant paragraph of the verdict made by the Hon'ble Apex Court in ***Gian Singh***'s case (supra).

“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 predominatingly 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.”

9. Since the offence(s) under Sections 324, 326 148, 149 of the IPC does not, *prima facie*, appear to be so grave and nor are so heinous, so as to attract the rigour of the embargo (supra) foisted upon the High Court in verdict (supra). Therefore, the settlement/compromise, as validly entered into, enjoins its being revered. Consequently, even if the afore offences are non-compoundable, this Court does not deem it fit to accept the contention(s) of the learned State counsel, that this Court, may not through recouring the mandate of Section 482 Cr.P.C., quash the FIR. In aftermath when rather thereupons, the chances of the petitioners being convicted are remote as well as bleak. In sequel, the ordering for the trial of the accused, would result in harassment and humiliation, being caused to the accused, besides would defeat the ends of justice.

10. Furthermore, an immense support to the afore made view, is also derived from the judgment rendered by the Punjab and Haryana High Court in case titled as *Vinod @ Boda and others versus State of Haryana and another 2017(1) R.C.R. (Criminal) 571*, wherein also, the above view has been reiterated.

11. There is merit in the petitions, and, both the same are allowed. Consequently, after accepting the report of the learned Magistrate concerned, this Court proceeds to quash the FIR (supra) as well as the cross case.

12. Accordingly, the FIR (supra), and, the cross cross, as arises out of the same, and, also all the consequential proceedings, hence arising therefrom, are all quashed qua the petitioners.

13. A photocopy of this order be placed on the file of other connected case.

22.03.2022

Ithlesh

(SURESHWAR THAKUR)
JUDGE

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