

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(289)

CRM-M-9370-2021

Date of Decision: 16.05.2022

Gulshan Kumar @ Gulshan @ Goldi & others

--Petitioners

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. H.S. Dhillon, Advocate for the petitioners.

Mr. Kirpal Singh, A.A.G., Haryana.

Mr. C.S. Singhal, Advocate for respondent no.2.

RAJESH BHARDWAJ.J (Oral)

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.168 dated 30.11.2015 under Sections 148, 149, 323, 506 IPC and Section 8 of POCSO Act, registered at Police Station, Ismailabad, District Kurukshetra and all the subsequent proceedings arising therefrom including the judgement of conviction and order of sentence dated 10.10.2019/14.10.2019 (Annexure P-3), passed by the learned JMIC, Pehowa as well as the proceedings upto the stage of learned Appellate Court, Kurukshetra in which criminal appeal no. CRA-340-2019 is pending for 15.3.2021, on the basis of compromise dated 29.1.2021 (Annexure P-4) arrived at between the petitioners and respondent no.2.

Brief facts of the present case are that respondent No.2 i.e. the complainant/prosecutrix lodged the FIR in question against the petitioners-accused. It was alleged that prosecutrix was studying in 10+2. On 27.11.2015 a tour of the school in which she was studying, went to Amritsar and she along with her cousin had gone to the tour. On 29.11.2015 at about

6 PM when the school van dropped the prosecutrix and her cousin to their home, then the petitioners/accused, who were standing in front of the house of accused Gulshan started speaking in filthy language and when the prosecutrix reached her home, accused/petitioners Gulshan and Bismek, who were in drunken condition, came behind her and started teasing her. Thereafter they ran after prosecutrix and torn her clothes. When the prosecutrix reached the house of her uncle, the accused/petitioners reached there and started beating her and uncle. They also gave beatings to other family members too. Thereafter, they ran away from the spot by threatening the prosecutrix to kill her on getting a chance. The prosecutrix got unconscious and was taken to LNJP Hospital. FIR was lodged to take legal action against the culprits.

The investigation commenced and on completion of the same the challan was presented. On the conclusion of the trial, accused Gulshan, Sukhbir and Dalbir were convicted under Sections 323, 354-A(i) read with section 34 IPC were convicted and sentenced for two years rigorous imprisonment by the trial Court vide its orders dated 10.10.2019/14.10.2019. The petitioners challenged the same by filing an appeal before the learned Additional Sessions Judge and the same is pending adjudication. During the pendency of the appeal, good sense prevailed and with the intervention of the respectables, the parties entered into a compromise and decided to bury the hatchet. The petitioners approached this Court by way the present petition for quashing of the FIR and consequent proceedings arising therefrom on the basis of the compromise arrived at.

Learned counsel for the petitioners submits that the prosecution of the petitioners is nothing but an abuse of the process of the Court. He submits that though the petitioners have already been convicted by the Court of competent jurisdiction, however, during the pendency of the appeal before the Additional Sessions Judge, Kurukshetra, the parties have arrived at a compromise and respondent No.2 does not want to prosecute the petitioners any more. Thus, the FIR and the subsequent proceedings alongwith judgment and conviction order dated 10/14.10.2019 passed by the learned JMIC, Pehowa may kindly be quashed. Learned counsel for the petitioners has relied upon the Full Bench Judgment of this Court titled as ***Kulwinder Singh and others vs. State of Punjab and another, 2007 (3) RCR 1052;*** and also ***Ramgopal and another vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322;*** and ***Sube Singh and another vs. State of Haryana and another, 2013(4) RCR (Criminal) 102.***

Learned counsel for respondent no.2 has supported the contentions of learned counsel for the petitioner, whereas learned State counsel has opposed the same.

This Court vide order dated 1.3.2021 directed the parties to appear before the learned Trial Court/Illaq Magistrate for recording their statements, as contended before the Court, and the learned Trial Court/Illaq Magistrate was also directed to send its report.

In pursuance to the same, learned JMIC, Pehowa sent his report dated 24.3.2021 to this Court. With the report, he has also annexed the photocopies of statements of complainant respondent No.2 Amandeep Kaur and joint statement of the petitioners, namely, Gulshan Kumar @ Gulshan @ Goldi, Sukhbir Singh @ Sukhbir and Dalbeer Singh @ Dalbir recorded

on 22.3.2021. On the basis of the statements, learned JMIC, Pehowa has concluded in the report that it appears that the parties have entered into a compromise voluntarily and that there is no other accused in the present case and that accused/petitioners have not been declared as Proclaimed Offender in this case.

I have heard learned counsel for the parties, perused the record and the report sent by learned JMIC, Pehowa.

A bare perusal of statutory provision of the 482 Cr.P.C. would show that the High Court may make such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 320 Cr.P.C. is equally relevant for consideration, which prescribes the procedure for compounding of the offences under the Indian Penal Code. Hon'ble Supreme Court in ***Ramgopal and another V. State of Madhya Pradesh*** (*supra*) has held as under:-

“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., 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)**.

XX XX XX

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.”

Hon'ble Division Bench of this Court in **Sube Singh's** case (supra) observed as under:-

“20.It has thus been ascertained to our satisfaction and stands established that the compromise arrived at between the parties is genuine, willful and bona fide. It is also proved that the petitioners and respondent No.2 are

living under the same roof. In fact, to remove any sort of doubts regarding the genuineness of the compromise, respondent No.2 appeared before us along with her daughter and made a statement on oath on 3.4.2013 in support of the compromise. She also stated that the parties are living under the one roof and she is being well looked after by her sons, namely, the petitioners.

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 16.3.2009 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 16.3.2009 would be rendered infructuous and shall be so declared by the first Appellate Court at Hisar.”

Keeping in view the nature of offences allegedly committed and the fact that both the parties have amicably settled their dispute, the continuation of criminal prosecution would be a futile exercise.

The Hon'ble Supreme Court in a number of cases including *Narinder Singh and others Versus State of Punjab and another, 2014 (6) SCC 466; B.S.Joshi and others vs State of Haryana and another (2003) 4 Supreme Court Cases 675* followed by this Court in Full Bench case of *Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR 1052* have dealt with the proposition involved in the present case and settled the law.

Thereafter, Hon'ble Supreme Court in *Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303* further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in *State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335*. Para 61 of the judgment reads as under:-

“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 a 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 a 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, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Applying the law settled by Hon'ble Supreme Court in plethora of judgments and this High Court it is apparent that when the parties have entered into a compromise, in the nature of cases as prescribed then continuation of the proceedings would be merely an abuse of process of the Court and by allowing and accepting the prayer of the petitioners by quashing the FIR would be securing the ends of justice, which is primarily the object of the legislature enacting under Section 482 Cr.P.C.

In the facts and circumstances, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and consequently, the FIR No.168 dated 30.11.2015 under Sections 148, 149, 323, 506 IPC and Section 8 of POCSO Act, registered at Police Station, Ismailabad, District Kurukshetra, judgment and conviction orders dated 10/14.10.2019 passed by the learned JMIC, Pehowa and all subsequent proceedings arising therefrom, are hereby quashed qua the petitioners, on the basis of compromise (Annexure P-4). The appeal pending before the Appellate Court stands infructuous.

Needless to say that the parties shall remain bound by the terms and conditions of the compromise and their statements recorded before the Court below. Petition stands allowed.

(RAJESH BHARDWAJ)
JUDGE

16.05.2022

lucky

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