In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 6584 of 2020 (O&M)
Date of Decision: 07.2.2022

Kamal Kumar @ Kambu and another .....Petitioners

Versus

State of Punjab and another .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Bhawesh Chaudhary, Advocate for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. Vinay Puri, Advocate for respondent No. 2.

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SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. Through the instant petition, cast under Section 482 Cr.P.C., the petitioners seek quashing of FIR No. 101 dated 5.8.2019, registered at Police Station Division No. 8, District Jalandhar, constituting therein offences, under Sections 307, 323, 324, 34 IPC, and, also of all the consequent proceedings arising therefrom, hence on the basis of compromise dated 31.1.2020 (Annexure P-2), arrived at between the parties.

2. When the instant petition came up before this Court on 1.12.2021, an order was made upon the learned Magistrate concerned, to make a report to this Court, with respect to the genuineness of the compromise, as also whether after completion of investigation, report under Section 173 Cr.P.C. has been filed, and, that whether charge has been drawn against the accused, besides that whether the prosecution evidence has commenced. The afore order, makes it apparent that the petitioners had depended, upon, a compromise/settlement, arrived at, in respect of the FIR (supra) with the complainant-respondent.

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3. The afore made order by this Court on 1.12.2021, has been complied with by the learned Magistrate concerned, and, the elicited report has been placed on record. A perusal of the report, transmitted to this Court, by the learned Magistrate concerned, reveals that the settlement/compromise, arrived at *inter se* the petitioners, and, the respondent No. 2, is a sequel of both, being *ad idem* qua it, besides the compromise/settlement being a sequel of no pressure or coercion, being exercised upon each other. Therefore, the learned Magistrate has reported that the settlement/compromise, depended upon by the petitioners, for seeking quashing of the FIR (supra), is both voluntary, and, genuine.

4. The learned counsel for the petitioners, as well as the learned State counsel submit, that all the concerned have signed the compromise deed (Annexure P-2). The learned counsel for the petitioners, and, the learned State counsel, on instructions from ASI Manjeet Ram, also submit that offence under Section 307 IPC had been deleted.

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 the petition, cannot be granted, as one of the offences constituted against the accused-petitioners, inasmuch as the one under Section 324 IPC, is 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 though, after completion of investigation by the investigating officer into the offences

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(supra), as embodied in FIR (supra), a report under Section 173 Cr.P.C., has been filed before the learned trial Magistrate concerned. However, it is also fairly stated before this Court that the charges have not yet been framed.

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., 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, hence for compounding the relevant offence, through recourse being made to the provisions of Section 482 Cr.P.C., 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

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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 recoursing 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*

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> *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 under Section 324 IPC does not, *prima facie*, appear to be so grave and nor is 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

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revered. Consequently, even if the afore offence is 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 recoursing the mandate of Section 482 Cr.P.C., quash the FIR, especially when after filing of the report under Section 173 Cr.P.C., the charges have not yet been framed. 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 petition, and, the same is allowed. Consequently, after accepting the report of the learned Magistrate concerned, this Court proceeds to quash the FIR (supra).

12. Accordingly, FIR No. 101 dated 5.8.2019, registered at Police Station Division No. 8, District Jalandhar, constituting therein offences, under Sections 307, 323, 324, 34 IPC, and, also all the consequential proceedings, hence arising therefrom, are quashed qua the petitioners.

(SURESHWAR THAKUR)
JUDGE

February 07, 2022
Gurpreet

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

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