

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

259

CRM-M-9645-2021 (O&M)
Date of decision: 05.12.2022

GURWINDER SINGH @ KALU

....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gusimran Singh Bawa, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

Mr. Kanwaljeet Singh, Advocate
for respondent Nos.2 and 3.

AMAN CHAUDHARY. J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.152 dated 19.10.2014 under Sections 307, 427, 34 IPC and Sections 25, 27 of the Arms Act registered at Police Station Majitha, District Amritsar (Rural) and all other consequential proceedings arising therefrom, in view of the compromise deed dated 06.02.2021 Annexure P-2 reached between the parties.

Heard.

In *B.S. Joshi v. State of Haryana, (2003) 4 SCC 675*, the Hon'ble The Supreme Court of India observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. Hon'ble The Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing.

In the case of “Gian Singh Vs. State of Punjab and another”, 2012 (4) RCR (Criminal) 543, Hon'ble The Supreme Court of India 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 paras read thus:-

“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”

61. 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 proceedings or continuation of criminal proceedings 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 proceedings.”

Hon'ble The Supreme Court of India in the case of **Yogendra Yadav v**

State of Jharkhand, (2014) 9 SCC 653 , held thus:

“[4]. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable.

Needless to say that offences which are non compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab, 2012(4) R.C.R.(Criminal) 543 : 2012(4) Recent Apex Judgments (R.A.J.) 549 : (2012)10 SCC 303). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court

can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

The aforesaid dictum stands reiterated by Hon'ble The Apex Court in a recent judgment in **Narinder Singh v. State of Punjab, (2014) 6 SCC 466**. The relevant observations of the Apex Court in Narinder Singh (Supra) are as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure: (i) ends of justice, or (ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity,

etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.”

In **Kailash Chand v. State of Rajasthan**, 2018(4) R.C.R (Criminal)

292, Hon’ble the Apex Court has held as under:

“[7]. Upon perusal of the record, it appears that the incident has occurred almost 30 years ago. Since the complainant/s and the appellant-accused belong to the same family and are living in the same house, they have buried their animosity and settled their disputes amicably in writing under an agreement letter dated 28.07.2017, copy of which is already placed on the file. The injured victims are brother and sister-in-law of the appellant. It is also stated in the aforesaid application for compromise/compounding of offence that there is no untoward incident has ever taken place after the date of incident.

[8]. Though the offences under sections 307 and 326 of the IPC are non-compoundable, having regard to the fact that the incident in the present case did not have an impact on the society in general, and having regard to the fact that the dispute between the parties has been settled amicably and there is no likelihood of the repetition of such incident, we allow the application for compromise/compounding of offence and set aside the orders of conviction and sentence passed by the courts below against the appellant by exercising our jurisdiction under Article 142 of the Constitution of India. The appellant is ordered to be acquitted of the charges levelled against him. Since the appellant is confined in jail, he is ordered to be released from custody forthwith if not required in any other case.”

Hon'ble The Supreme Court of India in the case of **State of Madhya**

Pradesh vs. Laxmi Narayan and others reported as (2019) 5SCC 688 has held as

under:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the noncompoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves.

However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation”

In the case of **Daxaben vs State of Gujarat**, (2022) SCC On Line SC

936, Hon'ble The Supreme Court of India held as under:

“50. In our considered opinion, the Criminal Proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr. P.C. only because there is a settlement, in this case a monetary settlement, between the accused and the complainant and other relatives of the deceased to the exclusion of the hapless widow of the deceased. As held by the three-Judge Bench of this Court in Laxmi Narayan &Ors. (supra), Section 307 of the IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. On a parity of reasoning, offence under section 306 of the IPC would fall in the same category. An FIR under Section 306 of the IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. It is clarified that it was not necessary for this Court to examine the question whether the FIR in this case discloses any offence under Section 306 of the IPC, since the High Court, in exercise of its power under Section 482 CrPC, quashed the proceedings on the sole ground that the disputes between the accused and the informant had been compromised.”

Adverting to the facts, parties in this case were directed to appear before the trial Court/Illaq Magistrate for recording their statements in the context of genuineness of the compromise.

Pursuant to the aforesaid order, report has been received that the compromise effected between the parties is genuine, voluntary and without any coercion or undue influence, none of the accused has been declared as proclaimed offender. The complainant party has no objection in case the FIR in question is quashed qua the petitioner(s).

In view of the judgments referred to above, perusing the report of the trial Court regarding amicable settlement between the petitioner(s) and the complainant(s), this Court finds that compounding the offences will accord a quietus to all disputes between the parties and it is in the interest of both sides to bury the hatchet and lead a peaceful life. Thus, no useful purpose would be served in continuing the proceedings and in order to secure the ends of justice, the criminal proceedings in the present case deserve to be quashed.

Resultantly, the present petition is allowed and FIR No.152 dated 19.10.2014 under Sections 307, 427, 34 IPC and Sections 25, 27 of the Arms Act registered at Police Station Majitha, District Amritsar (Rural) and all other consequential proceedings arising therefrom, are quashed qua the petitioner.

(AMAN CHAUDHARY)
JUDGE

December 05, 2022

S.Sharma(syr)

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