

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

CRM-M-15772-2017

Date of Decision: 19.12.2022

ROHIT KUMAR @ ROHIT KUMAR BABA

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. G.S. Dhillon, Advocate
for the petitioner.

Mr. Harjinder Singh, A.A.G., Punjab.

Mr. Inderjeet Singh Brar, Advocate
for respondent No.2.

HARSH BUNGER, J.

This petition has been filed for quashing of judgment and order of conviction dated 29.01.2016 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Jagraon alongwith case FIR No. 131 dated 18.06.2010 registered under Sections 406/420 of the Indian Penal Code at Police Station Sidhwan Bet, District Ludhiana, on the basis of compromise dated 05.04.2017 (Annexure P-2) entered into between the parties.

FIR No.131 dated 18.06.2010 came to be registered at the instance of respondent no. 2-complainant (Surjit Kaur) on the allegations that in the year 2001, she met the petitioner-Rohit Kumar and came to know that he was working as a travel agent and also serving as a Baba at Peer Ganj Dera. It was alleged that respondent no. 2-complainant (Surjit Kaur) used to visit Dera where she alongwith her husband and son met the petitioner, who told her that land of Peer Baba had been taken in Canada where Dera has to

be built and for this purpose, some people are required and he allured the complainant that he can send her alongwith her husband and son to Canada, for which he demanded Rs. 5,00,000/- (Rupees five lacs) per person. It was the allegation that the complainant alongwith her husband and son gave photocopies of their passports alongwith Rs. 7.5 lacs to the petitioner. However, after some days, the petitioner had allegedly told the complainant that the case to build Dera at Canada had been dismissed, whereupon the complainant had asked for return of their money. It was alleged that the petitioner lingered on the matter on one pretext or the other. Resultantly, the FIR in question was got registered.

Vide judgment and order of conviction dated 29.01.2016 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Jagraon, the petitioner was convicted and sentenced as under:

<i>Offence under Section</i>	<i>Sentence</i>
<i>406 IPC</i>	<i>Rigorous imprisonment for the period of one year.</i>
<i>420 IPC</i>	<i>Rigorous imprisonment for the period of three years and to pay fine of Rs.2000/-. In case of default of payment of fine, the convict will undergo SI for seven days.</i>

The petitioner challenged the judgment and order of conviction dated 29.01.2016 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Jagraon by way of filing an appeal before the learned Additional Sessions Judge, Ludhiana. However, during pendency of the said appeal, the dispute between the parties has been amicably resolved and the same has been reduced into writing by way of compromise deed dated 05.04.2017 (Annexure P-2).

Vide order dated 20.11.2018 passed by the Co-ordinate Bench of this Court, the Illaqa Magistrate/Trial Court was directed to record the

statements of the parties with regard to the genuineness and validity of the compromise.

In pursuance to said order dated 20.11.2018, a report dated 15.12.2018 was submitted by the learned Chief Judicial Magistrate, Ludhiana stating therein that complainant-Surjit Kaur did not appear to get her statement recorded however her son Sukhveer Singh got his statement recorded and also placed on record copy of Special Power of Attorney executed by Surjit Kaur. However, it was also submitted that in the absence of statement of complainant/her husband Amarjit Singh, it cannot be said that the compromise is genuine or not.

Thereafter, vide another order dated 14.02.2020 passed by the Co-ordinate Bench of this Court, the parties were again directed to appear before the Illaqa Magistrate/trial Court to get their statements recorded with regard to the compromise.

Pursuant to said order dated 14.02.2020, the learned Additional District and Sessions Judge, Ludhiana has submitted a report dated 19.02.2020, which indicates that the parties appeared before him and got recorded their respective statements with regard to the compromise. As per the report, the compromise has been made voluntarily by the parties. The relevant extract of the Report/Letter dated 19.02.2020 submitted by Additional District and Sessions Judge, Ludhiana, reads as under:-

“ In compliance with the order dated 14.2.2020 passed in CRM-5312-2020 in CRM-M-15772-2017 titled as Rohit Kumar Baba vs State of Punjab and another, statements of complainant Surjit Kaur and accused/appellant Rohit Kumar Baba regarding compromise recorded, which appear to have been made

voluntarily by the parties. Accordingly, report is submitted.”

In ***Shakuntala Sawhney v. Kaushalya Sawhney, (1979) 3 SCR 639, at P 642***, Hon'ble the Apex Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

Hon'ble the Apex Court in ***Gian Singh Versus State of Punjab and another. 2012(4) RCR (Criminal) 543*** has held as under:-

“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 accordance 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 pre-dominantly 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.”

Still further, the broad principles for exercising the powers under Section 482 were summarized by the Hon'ble Apex Court in

'Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others versus

State of Gujarat and another” (2017) 9 SCC 641’, the same are extracted as under:

16. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions :

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of

each case and no exhaustive elaboration of principles can be formulated;

16.6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16.8 Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil favour may in appropriate situations fall for quashing where parties have settled the dispute;

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High

Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

Recently, Hon'ble the Apex Court in ***Ramgopal v. State of Madhya Pradesh 2021(4) RCR (Criminal) 322*** has held that non-compoundable criminal cases of pre-dominantly private nature can be quashed under Section 482 Cr.P.C. even if compromise is reached after conviction. The relevant extract of the observation made by Hon'ble the Apex Court reads as under:

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly 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)*...”*

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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 extra-ordinary 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.”

Having appraised the afore-stated para-meters and weighing upon the peculiar facts and circumstances of the instant case, this Court is inclined to invoke powers under Section 482 Cr.P.C. to quash the criminal proceedings for the following reasons:

- (i) *The FIR in question is in relation to offences under Sections 406/420 of Indian Penal Code, which as per Section 320 Cr.P.C. are compoundable.*
- (ii) *The occurrence(s) involved in this case can be*

categorized as purely personal or having overtones of criminal proceedings of private nature;

- (iii) Given the nature of the offence, it is immaterial that the trial against the petitioner had been concluded;*
- (iv) The parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s);*
- (v) Since the petitioner and the complainant(s) are residents of the same area / town, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any ill-will and have no vengeance against each other; and continuation of the proceedings is not likely to advance any interest of justice.*
- (vi) The cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the petitioner.*

Accordingly, in exercise of powers under Section 482 Cr.P.C., this Court deems it appropriate to quash the criminal proceedings in the aforesaid case FIR No. 131 dated 18.06.2010 registered under sections 406/420 of the Indian Penal Code, at Police Station Sidhwan Bet, District Ludhiana, on the basis of compromise dated 05.04.2017 (Annexure P-2) entered into between the parties. As a sequel thereto, the judgment and order of conviction dated 29.01.2016 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Jagraon is set aside. Resultantly, the petitioner shall be deemed to have been acquitted of the charged offences for all intents and purposes. However, the same would be subject to payment of costs of Rs.10,000/- to be deposited by the petitioner with the **“Poor Patients' Welfare Fund, PGIMER, Chandigarh”** and the said amount would be

spent for the treatment of poor patients within the knowledge of its Medical Superintendent.

This petition is disposed of in the aforesaid terms.

All pending application(s), if any, shall stand disposed of.

December 19, 2022

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No