

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

**CRM-M-15632-2022
Date of Decision : 29.08.2022**

Nitish Ghai

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr.Gagandeep Singh Virk, Advocate
for the petitioner.
Mr. Madhur Sharma, AAG, Punjab.

Mr. B.B.S.Randhawa, Advocate
for respondent No.2.

PANKAJ JAIN, J(ORAL)

By way of present petition, the petitioner is seeking quashing of FIR No.244 dated 25.08.2018 registered under Section 420 IPC and Section 24 of the Immigration Act and Section 13 of Punjab Prevention of Human Smuggling Act, at Police Station, Division No.7, Ludhiana, on the basis of compromise dated 23.08.2018 (Annexure P-2).

On 18.04.2022, the following order was passed:-

“The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.244 dated 25.08.2018 under Section 420 of the IPC and Section 24 of the Immigration Act and Section 13 of the Punjab Prevention of Human Smuggling Act (Annexure P-1) registered at Police Station, Division No.7, Ludhiana and all consequential proceedings arising therefrom on

the basis of compromise dated 23.08.2018 (Annexure P-2) effected between the parties.

Notice of motion.

At this stage, Ms. A.K. Khurana, DAG, Punjab appears and accepts notice on behalf of respondent No.1-State.

Mr. B.B.S. Randhawa, Advocate, appearing on behalf of respondent No.2 admits the execution of compromise dated 23.08.2018 (Annexure P-2) and filed his power of attorney in the Court today.

The parties are directed to appear before the Illaqa Magistrate/trial Court on 09.05.2022 or any other date convenient to the Court for recording their respective statements with regard to compromise/settlement.

The Illaqa Magistrate/trial Court is directed to submit a report along with copies of statements of parties on or before the next date of hearing containing the following information as well:-

- (i) Number of persons arrayed as accused in FIR;
- (ii) Whether any accused is proclaimed offender;
- (iii) The stage of trial/proceedings;
- (iv) Whether the compromise is genuine, voluntary, and without any coercion or undue influence.
- (v) Whether the compromise has been effected with all the accused persons and with all the complainant(s)/injured.

To come up on 14.07.2022 for further consideration.

Reply by respondent No.1-State be filed on or before the next date of hearing, if so desired. ”

Pursuant to the aforesaid order, report from Judicial Magistrate Ist Class, Ludhiana has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

- “1. As per the report of the IO SI Sukhwinder Singh, the number of persons arrayed as accused in the present FIR is only one namely Nitish Ghai, who is the petitioner in the present CRM-M.
2. As per the report of the IO as well the Ahlmad of this Court, in the present case, no proclamation proceedings was ever initiated

against the accused.

3. As per the report of the IO and Ahlmad of this Court, the stage of trial/proceedings is the awaiting challan.

4. After perusing the statements of the complainant and the accused, this Court is satisfied that the compromise arrived at between them is genuine, voluntary and without any coercion or undue influence.

5. As per the record, there is one complainant/injured namely Vijay Kumar and one accused person namely Nitish Ghai in the present FIR, both the complainant/injured and accused have compromised the matter out of their free will and without any coercion or undue influence from any side.

Mr. B.B.S.Randhawa, Advocate for respondent No.2, admits the fact of parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto against the petitioners are quashed.

However, learned State counsel submits that though as per the report, the parties have compromised, but the fact remains that offences punishable under Section 24 of Immigration Act and Section 13 of Punjab Prevention of Human Smuggling Act are non-compoundable.

In response thereto, learned counsel for the petitioner relies upon the judgment passed by the Supreme Court in ***Criminal Appeal No.1489 of 2012, titled as 'Ramgopal and another vs. The State of Madhya Pradesh'***. The relevant portion of which reads as under;-

“11. True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and

modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences which have been consciously kept out as non compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.”

Keeping in view the law laid down by Supreme Court and the fact that parties have compromised, present petition is allowed. FIR No.244 dated 25.08.2018 registered under Section 420 IPC and Section 24 of the Immigration Act and Section 13 of Punjab Prevention of Human Smuggling Act, at Police Station, Division No.7, Ludhiana, and all proceedings subsequent thereto are hereby quashed qua the petitioner.

29.08.2022
mamta

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No