

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

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CRM-M-12676-2022

Date of Decision: 29.04.2022

NITISH GHAI

... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Gagandeep Singh Virk, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Ms. Anshika Sharma, Advocate
for respondent No.2-complainant.

VINOD S. BHARDWAJ, J. (ORAL)

By means of the instant petition, the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 has been invoked for seeking quashing of FIR No.270 dated 02.09.2018 under Section 420 of the Indian Penal Code, 1860, Section 10 and 24 of the Immigration Act and Section 13 of the Punjab Prevention of Human Smuggling Act, 2012 registered at Police Station Division No.7, Ludhiana and all other consequential proceedings arising therefrom, on the basis of compromise dated 08.10.2018 (Annexure P-2) entered into between the parties.

2 The parties were directed to appear before the learned trial Court/Illaq Magistrate vide order dated 25.03.2022 of this Court to get their statements recorded regarding the compromise arrived at between the parties and a report in this regard was called for.

3. Pursuant to the said order, report has been received from the

Judicial Magistrate Ist Class, Ludhiana vide Memo No.447 dated 20.04.2022. The relevant extract of the report is reproduced as under:-

“i) As per the statement of I.O. there is one accused namely Nitish Ghai in this case.

(ii) As per the statement of I.O. the accused is not P.O. in this case.

(iii) The case is pending for awaiting challan.

(iv) From the aforementioned statements of the parties, which were got recorded by the Court, it clearly appears that the compromise between the parties is genuine, voluntary and the same has been effected between the parties without any pressure, coercion or undue influence.”

4. Learned State counsel does not dispute the factum of the compromise amongst the parties and does not have any serious objection to the resolution of the dispute amongst the parties.

5. Ms. Anshika Sharma, Advocate appears and files power of attorney on behalf of respondent No.2 and reiterates the settlement and her concurrence to the FIR and all other consequential proceedings being quashed.

6. The Full Bench of this Court in the matter of **“Kulwinder Singh and others versus State of Punjab and another”** reported as **(Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052** has observed as under:

“(28) To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to

secure the ends of justice".

(29) In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and Ors., Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:

"The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

(30) The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

(31) No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

(32) The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

(33) The only inevitable conclusion from the above

discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.

(34) The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and everlasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.”

7. The legal principles as laid down for quashing of the judgment were also approved by the Hon'ble Supreme Court in the matter of 'Gian Singh Versus State of Punjab and another,(2012) 10 SCC 303'. Furthermore, the broad principles for exercising the powers under Section 482 were summarized by the Hon'ble Supreme Court in the matter of 'Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others'

versus State of Gujarat and another” (2017) 9 SCC 641’.

8. It is evident that in view of the amicable resolution of the issues amongst the parties, no useful purpose would be served by continuation of the proceedings. The furtherance of the proceedings is likely to be a waste of judicial time and there appears to be no chances of conviction.

9. The Hon'ble Supreme Court has held in the matter of **'Ramgopal And Another Vs State of Madhya Pradesh, 2021 SCC Online SC 834'**, that the matters which can be categorized as personal in nature or in the matter in which the nature of injuries do not exhibit mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest, the Court can quash the FIR in view of the settlement arrived at amongst the parties. The observation of the Hon'ble Supreme Court is extracted as under:-

“19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. 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. 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. 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.”

10. The following relevant factors emerge from perusal of the case as well as the subsequent developments supplementing a case for invocation of the powers under Section 482 Cr.P.C.:

- (i) That the case in question arose on the alleged assurance on the part of the petitioner-accused to send the the resondent No.2-complainant abroad on Work Permit VISA i.e. to Australia.
- (ii) That the allegation against the petitioner is that neither he sent the complainant abroad nor did he repay the amount deposited by the complainant.
- (iii) That the dispute is largely related to a monetary transaction in lieu of services offered by the petitioner.
- (iv) That the FIR in question was registered in the year 2018, however, only the report under Section 173 (2) of the Cr.P.C. has filed before the Illaqa Magistrate so far and even the charges have not been framed till date. Meaning thereby, the trial of the case has not commenced yet.
- (v) That the petitioner is stated to be 34 years of age. Continuation of criminal proceedings shall have severe impact upon the career prospects of the petitioner and is likely to cause serious impediment to the petitioner in discharge of his social obligations as well as that of his workplace.
- (vi) The offence in question cannot be said to be heinous or as an offence that would be shocking to the conscience of

the society or public at large. It can also not be termed as one shocking to the conscience of the Court nor can it be said to have fallen under any of the prohibited categories.

- (vii) Continuation of the proceedings and forcing the parties to undergo rigours of criminal proceedings is not likely to sub-serve any larger public interest; rather it may spoil the congenial atmosphere in the village.
- (viii) The proceedings are likely to end in futility for want of parties to support the case of the prosecution;
- (ix) The petitioner does not suffer any criminal antecedents and have not indulged in any such or similar case during the pendency of the case or after registration of the FIR.
- (x) The complainant is not likely to support the case of the prosecution. Continuation of the proceedings is likely to be a waste of judicial time. The object of law is well served when the parties resolve their differences and choose to peacefully co-exist and live in harmony.

11. In view of the report of the Judicial Magistrate Ist Class, Ludhiana and the principles laid down by the Apex Court in **Gian Singh Vs. State of Punjab and others (2012) 10 SCC 303**, as well as **Ramgopal And Another Vs State of Madhya Pradesh 2021 SCC Online SC 834** and also by the Full Bench of this Court in **Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR (Criminal) 1052**, the instant petition is allowed. The aforesaid FIR No.270 dated 02.09.2018 under Section 420 of the Indian Penal Code, 1860, Section 10 and 24 of the

Immigration Act and Section 13 of the Punjab Prevention of Human Smuggling Act, 2012 registered at Police Station Division No.7, Ludhiana and all other consequential proceedings arising therefrom, **are hereby quashed** qua the petitioner in view of compromise dated 08.10.2018 (Annexure P-2). However, the same would be subject to payment of costs of Rs.10,000/- to be deposited by the petitioner in the **High Court Lawyers Welfare Fund, Chandigarh** within one month from receipt of certified copy of this order.

Petition is allowed, accordingly.

(VINOD S. BHARDWAJ)
JUDGE

29.04.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No