

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CRM-M-18959-2021

Reserved on : 11.11.2021

Pronounced on: 06.01.2022

Sukhdev

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Deep Goel, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Rahul Deswal, Advocate and
Mr. G.C. Shahpuri, Advocate for respondents No.2 & 3.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
303	19.09.2019	Nissing, District Karnal	323, 325, 307, 34, 452 & 506 IPC and Section 25 of Arms Act

The petitioner, who has been arraigned as an accused in the above captioned FIR, has come up before this Court under Section 482 CrPC to quash the FIR and all consequential proceedings based on the compromise with the victims.

2. The gist of the allegations against the petitioner(s) is that on 19.09.2019, the police recorded the statement of the complainant (respondent No.2) in the following terms:-

A few days earlier, his son Parmod had entered into an altercation with Amar Pal. After that altercation, one Nepal s/o Gian Singh, gave beatings to him. Subsequently his son Parmod brought him to home. At 5.30 pm when he along with his son Amit (respondent No.3) along with other family members were present at home then Nepal s/o Gian Singh, Sukhdev (present petitioner) and two other boys of their family who were wearing mask on their faces, entered into their houses. Out of them Sukhdev was carrying pistol, Nepal had gandasi and other two boys were having dandas in their hands. After entering into their house Sukhdev fired upon him with his pistol. To save himself he laid on the Khat (bed). Subsequently both

boys gave beatings to him with danda. After that Sukhdev also fired upon his son pallet hit on the right leg. On hearing kmotion people gathered there. Later on other persons threatened them to do away with their life and ran away. The local people brought him to the hospital at Karnal. Subsequently they were referred to Trauma Center, Government Hospital, Karnal. Based on such information, the police registered the FIR captioned above.

3. During the pendency of the petition, the accused and the injured have compromised the matter, and its copy is annexed with this petition as **Annexure P-4**. It is relevant to extract para Nos.1 & 2 of the compromise deed, which reads as follows:-

"1. That a FIR No.303 dated 19.09.2019 under Section 323, 325, 307, 34, 452 & 506 IPC and 25/54/59 Arms Act, P.S. Nissing, Distt. Karnal at the instance of second party namely Sh. Satpal son of Sh. Balwant Singh against the son of First Party namely Sukhdev son of Sh. Raj Kumar @ Chand Ram Rana. Both the parties are permanent resident of the Village Katlaheri, P.S. Nissing, Distt. Karnal and same very locality. Now being the same locality of both the parties, with intervention of the respectable persons of the society and Panchayat members of the Village for the peaceful life of both parties, the matter has been amicably settled between the parties. However, both the parties have no grouse/complaint against each other's. Now both the parties have cleared off their grudge against each other and both the parties have agreed to this compromise deed with their free Will and without any kind of pressure. Both the parties are ready to be present to make the statement before any Hon'ble Court. This compromise has been executed between both the parties at their own will and without any kind of pressure. The second party does not want any action on the above said FIR against the First Party. Both the parties want to piece and are agreed to finish the case in view of the compromise.

That the second party has no objection if the son of first party namely Sukhdev is released on bail in the abovesaid case and the abovesaid FIR as well as consequential/subsequent proceedings arising therefrom are quashed as he doesn't want any action against the son of First party."

4. After that, the petitioner has come up before this Court to quash the FIR along with all consequential proceedings based on the compromise., and in the quashing petition, the injured have been impleaded as respondent(s).

5. Vide order dated 29.06.2021, Co-ordinate Bench of this Court had permitted the parties to get their statements recorded, which is reproduced as under:-

"Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No. 303 dated 19.09.2019, under Sections 323, 325, 307, 34, 452, 506 IPC and Section 25 of Arms Act, 1959, registered at police Station Nissing, District Karnal

and all consequential proceedings arising therefrom on the basis of compromise (Annexure P-4).

As per the allegations in the FIR, on 19.09.2019 the complainant was present at his house alongwith his sons Parmod and Amit and other family members. Nepal s/o Gian Singh armed with Gandasi, Sukhdev s/o Raj Kumar (petitioner) armed with pistol and two other boys armed with dandas belonging to their family who had covered their face entered in the house of the complainant and started giving beatings to him. In the meanwhile, Sukhdev fired shot at the complainant but the shot did not hit him. He then fired a shot at Amit (son of complainant), which hit him on the right leg. On hearing the noise, people came and gathered there. Then the accused persons ran away with their weapons from the spot. While going Sukhdev (petitioner) fired at the gate of the house of the complainant. The complainant and his son were taken to Civil Hospital, Karnal by their family members.

Learned counsel for the petitioner states that the petitioner and the complainant are close relatives. The injury sustained by Amit is on non vital part. It is also stated that the petitioner is a young boy aged 26 years and he has done his diploma in engineering. He states that with the intervention of respectables of the village, the parties have entered into compromise and they want to live in peace and harmony.

Notice of motion.

Mr. Pankaj Middha, Addl. A.G., Haryana and Mr. Rahul Deswal, Advocate accepts notice on behalf of respondents No. 1 and 2 respectively.

Parties may appear before concerned trial Court/Duty Magistrate on 05.07.2021 or on any other date convenient to the said Court to get their statements recorded with regard to the compromise. The original compromise shall be produced before trial Court/Duty Magistrate. In the event of their statements being recorded, trial Court/Duty Magistrate will send copies of the same to this Court before the next date of hearing along with his/her report:

- i) regarding genuineness and voluntary nature of the compromise;*
- ii) whether all the accused/petitioners are appearing before the Court or are on bail; and*
- iii) whether any other proceeding is pending against the accused/petitioners.*

Adjourned to 23.09.2021."

6. In compliance to the order dated 29.06.2021, passed by this Court, learned Additional Sessions Judge, Karnal, submitted its report, which is as under:-

"In view of the directions issued by the Hon'ble Punjab & Haryana High Court vide order dated 29.06.2021 passed in CRM-M-18959-2021 titled as "Sukhdev Vs. State of Haryana and others", the complainant party appeared before the undersigned on 05.07.2021 for recording their statements. The undersigned was also directed to send a report regarding the validity or otherwise of the compromise, after recording the statements of all concerned parties.

In this connection, it is respectfully submitted that the complainant Satpal son of Shri Balwant Singh, injured Amit son of Satpal and PW Parmod son of Satpal, all residents of Village Katlaheri, District Karnal duly identified by their counsel appeared before the court of undersigned on 05.07.2021 and got their statements recorded. They have made separate statements that they have compromised the matter with the accused with their free will and consent and they have no objection

if the FIR is quashed. Further, they have stated that the original compromise dated 12.04.2021 is in the file of Hon'ble High Court and copy of compromise deed is Ex.C1. Similarly, accused Sukhdev appeared before the Court through video-conferencing on 12.07.2021 and made a statement that his father has entered into a compromise on 12.04.2021 with the complainant party in the present case on his behalf with his free will and consent and the same is admitted by him. Shri Raj Kumar @ Chand Ram Rana has also made a statement that on behalf of accused Sukhdev, he has entered into a compromise on 12.04.2021 with the complainant party with his free will and consent. He has also stated that the original compromise dated 12.04.2021 is in the file of Hon'ble High Court and copy of compromise deed is Ex.C1.

Notice to the Investigating Officer (IO) of the case was also issued and in pursuance to the notice IO ASI Ashok Kumar No.131 KNL, PP Sadar Bazar, Karnal appeared before the Court on 12.07.2021 and his statement was recorded. He has stated that apart from accused Sukhdev, no other person is involved as accused in the present case. Further, he has stated that as per record, no other case is pending against accused Sukhdev nor he has been declared proclaimed offender in any case.

In view of the above, report of undersigned on the required points is as follows:-

(i) On the basis of statements of parties, undersigned is of the view that the matter has been compromised between the parties with their free will and consent, without any pressure and coercion on either side and the compromise effected between the parties is genuine and voluntary. It needs to be mentioned here that the original compromise dated 12.04.2021 has not been produced before the undersigned, rather both the parties have stated that the original compromise dated 12.04.2021 is in the file of Hon'ble High Court and a copy of compromise deed dated 12.04.2021 has been placed on record as Ex.C1.

(ii) As per the police report and statement of IO ASI Ashok Kumar No.131 KNL, there is only one accused Sukhdev in the present case who is appearing before the Court in custody.

(iii) As per the statement of IO ASI Ashok Kumar No.131 KNL, no other case/proceeding is pending against accused Sukhdev nor he has been declared proclaimed offender in any case.

Copy of the statements of parties as well as statement of the IO ASI Ashok Kumar No.131 KNL alongwith copy of compromise deed Ex.C1 produced before the undersigned are enclosed herewith for kind perusal."

7. Perusal of the compromise deed (Annexure P-4) reveals that it was entered into by one of the accused Raj Kumar with injured Satpal and Amit. Thus the present petitioner is not signatory to the compromise deed (Annexure P-4).

8. The compromise qua the present petitioner-Sukhdev are mentioned in the statement of the injured, made by them on oath before the Court of ASJ Karnal. Statements of Sukhdev and Amit are identical, which reads as under:-

"Stated that I have entered a compromise with the accused with my free will and consent. I have no objection in quashing the FIR. Original compromise dated 12.04.2021 is in the file of Hon'ble High Court and copy of compromise deed is Ex.C1."

9. Perusal of the same reveals that no reason has been mentioned as to how the

compromise is beneficial for the accused and the complainant. The specific allegations against the petitioner are that he had entered into their house and fired two shots to the injured person. It is their case that they are living in harmony or they have settled all their disputes and compromised good benefit improved the relationship between the parties and the villagers. The offence also involves Section 307 IPC.

10. Learned counsel for the State has also referred to judicial precedents of the Hon'ble Supreme Court of India in ***State of Madhya Pradesh v. Laxmi Narayan 2019(5) SCC 688*** and ***State of Madhya Pradesh v. Deepak 2014(10) SCC285***.

11. The Co-ordinate Bench of this Court had only permitted the parties to appear before the Court for recording their statements and not expressed its opinion that some recording of their statements ipso facto would result into the binding compromise of the matter and it had not mentioned that the statements if recorded would ipso facto be binding to quash the proceedings.

12. In Ram Prasad v State of Uttar Pradesh, (1982) 2 SCC 149, Supreme Court holds, "The appellants, who are the accused and the complainant, Shri Ram, who was the person injured as a result of firing, have appeared before us and stated that they wish to compound the offence. The offence for which both the appellants have been convicted is one under Section 307 read with Section 34 of the Indian Penal Code, but having regard to the nature of the injury sustained by Shri Ram, we think that the proper offence for which the appellants should have been convicted was under Section 324 read with Section 34. Shri Ram received only one injury on the shoulder and that was also in the nature of simple hurt. We would, therefore, convert the conviction of the appellants to one under Section 324 read with Section 34. Since the parties belong to the same village and desire to compound the offence, we think, in the larger interest of peace and harmony between the parties and having regard to the nature of the injury, that it would be proper to allow the parties to compound the offence."

13. In Mahesh Chand v State of Rajasthan, 1990 SCC 781, Hon'ble Supreme Court holds as under:

"[2]. The accused were acquitted by the trial court, but they were convicted by the High Court for the offence under section 307 Indian Penal Code This offence is not compoundable under law. The parties, however, want to treat it a special case, in view of the peculiar circumstances of the case. It is said and indeed not disputed that one of the accused is a lawyer practising in the lower court. There was a counter case arising out of the same transaction. It is said that this case has already been compromised. The decision of this Court in Suresh Babu v. State of Andhra Pradesh, 1987(2) JT 361, has been also referred to in support of the plea for permission to compound the offence."

14. In DimpeyGujraj v Union Territory, (2013) 11 SCC 497, Supreme Court holds, "[5]. In light of the above observations of this court in Gian Singh v. State of Punjab and another, 2012(4) R.C.R.(Criminal) 543 : 2012(4) Recent Apex Judgments (R.A.J.) 549 : 2012(5) CTC 526 (SC) we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Section 147, 148, 149, 323,

307, 452 and 506 of the Indian Penal Code at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

15. In State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149, Hon'ble Supreme Court holds,

"We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in Gian Singh, and has committed a mistake in taking the view that, the injuries were caused on the body of Abdul Rashid in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in Gian Singh that the Court, while exercising the power under Section 482, must have "due regard to the nature and gravity of the crime" and "the societal impact". Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against "an individual", rather than against "the society at large".

We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences.

Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

We are, therefore, inclined to allow this appeal and set aside the judgment of the High Court. The High Court was carried away by the settlement and has not examined the matter on merits, hence, we are inclined to direct the High Court to take back the appeal to its file and decide the appeal on merits."

16. In Yogendra Yadav v State of Jharkhand, 21.7.2014, Supreme Court holds,

"[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.”

17. In State of Madhya Pradesh v. Dhruv Gurjar, (2019) 5 SCC 570, the FIR was registered under S 307, 294 and 34 IPC based on the allegations that Dhruv Gurjar (accused) armed with a 12-bore gun, and his gang, visited the house of the complainant with a view to take revenge with his nephew. When the complainant told them that his nephew was not present at home, on this Dhruv Gurjar fired, and the pellets struck on his forehead, left shoulder and left ear. Disagreeing with the order of High Court quashing the FIR, Hon’ble Supreme Court held,

“However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 of the Cr.P.C. From the impugned judgments and orders, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgments and orders passed by the High Court, it appears that the High Court has mechanically quashed the respective FIRs, in exercise of its powers under Section 482 Cr.P.C. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in the case of State of Maharashtra vs. Vikram Anantra Doshi, 2014 15 SCC 29, the Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence.”

18. Given above, the petitioner fails to make out a case for quashing of FIR in the light of judicial precedents mentioned above.

Petition dismissed.

(ANOOP CHITKARA)
JUDGE

06.01.2022
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No