

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

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**CRM-M-19732-2021(O&M)
Date of decision: 24.03.2022**

GULSHAN KUMAR AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present : Mr. Abhishek Kumar, Advocate
for the petitioners.

Mr. Karanbir Singh, AAG Punjab.

Mr. Himmat Singh Sidhu, Advocate
for respondent No.4.

VINOD S. BHARDWAJ. J. (ORAL)

By means of the instant petition, the jurisdiction of this Court under Section 482 Cr.P.C. has been invoked for seeking quashing of FIR No.063 dated 04.04.2021 under Section 306 of the IPC registered at Police Station City, Rajpura, District Patiala and all other consequential proceedings arising therefrom, on the basis of compromise dated 09.05.2021 (Annexure P-2) entered between the parties.

2 Vide order dated 01.02.2022 of this Court, the parties were directed to appear before the learned trial Court/Illaq Magistrate on 14.02.2022 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 Sub Divisional Judicial Magistrate, Rajpura vide Memo No.364 dated 09.03.2022.

The relevant extract of the report reads thus:-

As far as the information sought by Hon'ble Punjab and Haryana High Court with regard to the fact about number of persona arrayed as accused in FIR, whether any accused is proclaimed offender and stage of trial/proceedings, statement of SI Gurnam Singh-1187, Patiala I/c Police Post KSM, Rajpura, investigating Officer of this case has been recorded on 23.02.2022, who stated that in the present FIR only two persons namely Gulshan Kumar and Manu Zirakpur. He further stated that in the above said case accused are not proclaimed offender and the Case is pending at initial stage of investigation and challan has not been presented in court till date.

The undersigned has carefully gone through the statements got recorded by complainant and accused and it appears from the statements of the parties (recorded before the undersigned) that they have arrived at compromise with their free volition, without any pressure, threat, coercion or undue influence from any quarter. Further from the statement of Investigating Officer, it appears that only Gulshan Kumar son of Diwan Chand and Abhimanyu alias Monu Zirakpur son of Shyam Sunder have been arrayed as accused in the above said FIR and they are not proclaimed offender; and the case is pending at initial stage of investigation and till date challan has not been presented before the Court.

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. Mr. Himmat Singh Sidhu, Advocate appears on behalf of respondent No.4 and reiterates the settlement and his concurrence to the FIR and all the other consequential proceeding being quashed.

others versus State of Punjab and another” reported as *(Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052* has been 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 ever-lasting 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 SCC303**'. Still further, 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’, the same are extracted as under:

16. The broad principles which emerge from the precedents on the subject, may be summarised 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 flavour 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.

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 extra-ordinary 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. A perusal of the FIR shows that the husband of the complainant had come in contract with a person named Manu and certain monetary transactions had been held between them. It is submitted that on account of the aforesaid monetary transactions, the husband of the complainant was under constant harassment and remained disturbed. It has been further stated that even though the family shifted to Rajpura, however, Manu continued to make phone calls to her husband. The husband of the complainant thereafter borrowed certain sum of money from Gulshan financier and the compounding interest became huge. As a result thereof, the financier kept the Car of the husband of the complainant with him. Feeling embarrassed on account of the said circumstances, husband of the complainant is stated to have jumped into Ganda Kheri Canal and committed suicide. It is

apparent that the dispute in question pertains to monetary transaction amongst the parties. The deceased felt aggrieved of the persistent demands being raised by the financier and steps taken by them to effectuate the recovery of the money. The action in question although would not fall within the definition of exceptions carved out by the Hon'ble Supreme Court's judgment, however, what is essential to be noticed at this juncture is that the nature of offence has to be seen from the perspective of its impact on public order, mental depravity, impact on society at large and in the governance and administration of criminal justice administration system. The offence does not reflect depravity of character or involve causing intentional loss of life or property by extending imminent threat to loss of life, such offence be permitted to be quashed on the basis of the compromise. The offence in question, however, does not fall into the aforesaid ambit but is only grievous by the mere nature of its consequences. The amicable resolution of the dispute can always be taken into consideration by the Court. Apparently, in case the said aspect is not taken into consideration or is disregarded by the Court, the same is likely to result in the parties indulging in hoodwinking the process of law in order to ensure acquittal of the accused by subverting the process of administration of criminal justice. The same would thus not sub-serve any larger public interest. Besides, this Court as in the matter of **Balwan Singh @ Visakha Singh & Ors Vs. State of Punjab & Anr in CRM-M-14468-2019 decided on 28.05.2019; CRM-M-31173-2008 titled as Yash Kumar Arora & Anr Vs. State of Punjab & Anr decided on 06.02.2009; CRM-M-48461-2017 titled as Vicky Chauhan Vs. State of Punjab & Anr decided on 09.03.2018; CRM-M-6455-2021 titled as Vijay Kumar @ Billu Saini Vs. State of Haryana & Another decided on 09.04.2021; CRM-M-36447-2019 titled as Shama Verma & Others Vs. State of Punjab & Another decided on 29.11.2019; as well as CRM-M-12998 of 2016**

titled as Sukhwinder Kaur & Another Vs. State of Punjab & Another decided on 14.02.2019, have quashed the FIR and consequential proceedings arising therefrom for offence under Section 306 IPC.

11. In view of the report of the Sub Divisional Judicial Magistrate, Rajpura 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**, the Full Bench of this Court in **Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR (Criminal) 1052**, as well as the precedent judgments of this Court referred to in the preceding paragraphs, the instant petition is allowed. The aforesaid FIR No.063 dated 04.04.2021 under Section 306 of the IPC on registered at Police Station City, Rajpura, District Patiala and all other consequential proceedings arising therefrom, **are hereby quashed** in view of compromise dated 09.05.2021 (Annexure P-2). However, the same would be subject to payment of costs of Rs.25,000/- each to be deposited by the petitioners with the **Punjab and Haryana High Court Advocates' Welfare Fund, Chandigarh** within one month from receipt of certified copy of this order.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

March 24, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>