

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

SR. No.240

CRM-M-32537-2018

Date of Decision:15.03.2022

Sudhir Duggal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr.Vaibhav Narang, Advocate,
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab.

Mr. Vivek Salathia, Advocate
for respondent No.2-complainant.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

Petitioner has approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure invoking its inherent jurisdiction for quashing of Complaint No.1210/08 dated 02.06.2008/01.07.2011 under Section 138 of the Negotiable Instruments Act, 1881 lodged at Police Station Civil Lines, Amritsar as well as the consequential proceedings arising therefrom and order dated 07.05.2010 passed by the JMIC, Amritsar, whereby the petitioner has been declared as proclaimed offender.

Vide orders dated 25.03.2021 & 16.08.2021, this Court directed both the parties to appear before the trial Court to record their statements with regard to genuineness of the compromise and the learned trial Court was directed to send a report to this Court in this regard. The report dated

23.09.2021 of Judicial Magistrate 1st Class, Amritsar has been received, wherein it is stated that in pursuance of the order of this Court, the statements of the parties were recorded which indicates that the compromise is genuine, without any coercion or undue influence. It is further mentioned in the report that except the present petitioner, accused Sandeep Duggal, Rachna Duggal and Vinesh Duggal were convicted by the learned trial Court vide judgment dated 01.06.2013 as he was declared proclaimed offender. It is also recorded therein that Sudhir Duggal through his attorney Sh. Sandeep Duggal has filed the present petition.

Learned counsel for the petitioner submits that offence against the present petitioner is primarily bailable and when he is abroad and gave power of attorney to his brother, namely Mr. Sandeep Duggal, his case does not fall under sub section 4 of the Section 82 of the Cr.P.C. He further submits that in view of the matter having been compromised between the parties and also the offence is bailable, the order dated 07.05.2010 declaring the petitioner as proclaimed offender is liable to be quashed.

Learned counsels appearing on behalf of both the parties admit that parties have settled their disputes.

Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (CrI.) 1052** considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to

achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and

with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised Ex-Debitia, justitia to prevent abuse of process of Court.

In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelming and predominantly of civil profile arising out of commercial, financial, mercantile and civil or mechanical nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise.

In Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.) 543, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in the following manner:-

“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 accord 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 predominatingly 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.”

From the perusal of the case file, it emerges that the petitioner has been residing in the United States of America since 2006. It further emerges that the learned trial court directed to initiate the proceedings under Sections 82/83 of the Cr.P.C.

Taking into consideration the bonafide of the petitioner and further considering the fact that the parties have amicably settled the dispute, the order dated 07.05.2010 declaring the petitioner as proclaimed offender is hereby set aside.

After considering the nature of offence allegedly committed in the instant case and the fact that both the parties have amicably settled their dispute, continuance of criminal prosecution would be an exercise in futility, as the chances of ultimate are bleak.

Taking into consideration the totality of facts and circumstances, this Court of the view that the case can be considered for quashing of FIR along with subsequent proceedings arising therefrom, on the basis of compromise. Resultantly, Complaint No.1210/08 dated 02.06.2008/01.07.2011 under Section 138 of the Negotiable Instruments Act, 1881 lodged at Police Station Civil Lines, Amritsar as well as the consequential proceedings arising therefrom are quashed qua the petitioner.

15.03.2022
mks

(SANT PARKASH)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO