

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(283-1)

CRM-M-19614-2022

Date of decision: - 12.07.2022

Balwinder Singh and others

....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Manipal Singh Atwal, Advocate, for the petitioners.

Mr. R.S. Khaira, AAG, Punjab.

Mr. M.S. Chauhan, Advocate, for respondent No.2.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing of DDR No.26 dated 20.10.2011 registered under Sections 323, 324, 148, 149 of the Indian Penal Code, 1860 in FIR No.130 dated 20.10.2011 registered at Police Station Bullowal, District Hoshiarpur (Annexure P-1) as well as for setting aside the judgment dated 25.09.2018 and order of sentence passed by the Judicial Magistrate 1st Class, Hoshiarpur, vide which all the petitioners have been convicted under Sections 323, 324 and 149 IPC, on the basis of compromise.

On 10.05.2022, this Court was pleased to pass the following order:-

“This is a petition filed under Section 482 Cr.P.C. for quashing of DDR No.26 dated 20.10.2011 registered under Sections 323, 324,

148, 149 of the Indian Penal Code, 1860 in FIR No.130 dated 20.10.2011 registered at Police Station Bullowal, District Hoshiarpur (Annexure P-1) and all the subsequent proceedings arising therefrom on the basis of compromise.

Learned counsel for the petitioners has submitted that all the persons concerned are party to the compromise. It is further submitted that against the judgment of conviction, an appeal has been filed and the same is pending before the Additional Sessions Judge, Hoshiarpur Notice of motion for 12.07.2022.

On asking of the Court, Mr. Sarabjit S. Cheema, AAG, Punjab appears and accepts notice on behalf of the respondent-State and Mr. M.S. Chauhan, Advocate appears on behalf of respondent No.2.

The parties are directed to appear before the Illaqa Magistrate/trial Court for recording their statements qua compromise within a period of 15 days.

The Illaqa Magistrate/trial Court is directed to submit a report on or before the next date of hearing containing the following information:-

- 1. Number of persons arrayed as accused.*
- 2. Whether any accused is proclaimed offender?*
- 3. Whether the compromise is genuine, voluntary and without any coercion or undue influence?*
- 4. Whether the accused persons are involved in any other FIR or not?*
- 5. The trial Court is also directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR.*

To be heard alongwith CRM-M-19080-2022.”

In pursuance of the said order, the report has been submitted by the Judicial Magistrate 1st Class, Hoshiarpur, to the Assistant Registrar (Criminal) of this Court. The relevant part of the report is reproduced hereinbelow:-

“The requisite information as desired by Hon'ble High Court is detailed hereunder: -

(1) *Number of persons arrayed as accused.*

As per the statement of Investigating Officer, there are five persons arrayed as accused in the present DDR Case.

(2) *Whether any accused is proclaimed offender.*

As per report of Ahlmad, no accused was declared proclaimed offender in the present case.

(3) *Whether the compromise is genuine, voluntary and without any coercion or undue influence?*

The compromise arrived at between the parties is genuine, voluntarily and out of their free Will.

(4) *Whether the accused persons are involved in any other FIR or not?*

Only accused Balwinder Singh S/o Mohan Singh is involved in cross case FIR No.130 dated 20.10.2011, under Sections 323, 324, 326, 149 IPC as complainant. Except him, no other accused is involved in any other FIR

(5) *The trial court was further directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR.*

As per report of Investigating Officer, there is one complainant/victim in the present DDR case.

Report as desired, is hereby submitted for your kind perusal, please.

Encls: As above.

*Yours faithfully
(Prabhjot Kaur)
Judicial Magistrate 1st Class
Hoshiarpur. UID No.PB0363"*

A perusal of the said report would show that statements of the concerned persons have been recorded in the case, who have stated that the matter has been compromised and they have no objection in case the present petition is allowed. They have further stated that the said compromise is being entered into with there genuine, voluntarily and without any coercion or undue influence.

Learned counsel for the petitioners has submitted that the petitioners have not been declared proclaimed offender. Learned counsel

for the State, as per instructions, has stated that this fact is correct.

Learned counsel for respondent No.2 has again reiterated that the matter has been settled and the said compromise is in the interest of all the persons and would help in bringing out peace and amity between the parties.

The brief facts of the case are that in the present case, DDR No.26 dated 20.10.2011 was got registered by respondent No.2 under Sections 323, 324, 148, 149 of the Indian Penal Code, 1860 in FIR No.130 dated 20.10.2011 registered at Police Station Bullowal, District Hoshiarpur (Annexure P-1). The Judicial Magistrate 1st Class, Hoshiarpur vide judgment dated 25.09.2018 had convicted five accused/petitioners as under: -

<i>"S. No.</i>	<i>Name of accused</i>	<i>offence u/s</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default</i>
<i>1</i>	<i>Balwinder Singh</i>	<i>324 IPC</i>	<i>To undergo RI for one year.</i>	<i>-</i>	<i>-</i>
		<i>323/149 IPC</i>	<i>To undergo RI for 6 months.</i>	<i>-</i>	<i>-</i>
		<i>323/149 IPC</i>	<i>To undergo RI for 6 months</i>	<i>-</i>	<i>-</i>
<i>2.</i>	<i>Surjit Singh</i>	<i>324/149 IPC</i>	<i>To undergo RI for one year.</i>	<i>-</i>	<i>-</i>
		<i>323/149 IPC</i>	<i>To undergo RI for 6 months.</i>	<i>-</i>	<i>-</i>
		<i>323 IPC</i>	<i>To undergo RI for 6 months</i>	<i>-</i>	<i>-</i>
<i>3.</i>	<i>Jyoti Saroop</i>	<i>324/149 IPC</i>	<i>To undergo RI for one year.</i>	<i>-</i>	<i>-</i>
		<i>323/149 IPC</i>	<i>To undergo RI for 6 months.</i>	<i>-</i>	<i>-</i>
		<i>323 IPC</i>	<i>To undergo RI for 6 months</i>	<i>-</i>	<i>-</i>
<i>4.</i>	<i>Gagandeep Singh</i>	<i>324/149 IPC</i>	<i>To undergo RI for one year.</i>	<i>-</i>	<i>-</i>
		<i>323 IPC</i>	<i>To undergo RI for 6 months.</i>	<i>-</i>	<i>-</i>

		323/149 IPC	To undergo RI for 6 months	-	-
5.	Mandeep Singh	324/149 IPC	To undergo RI for one year.	-	-
		323/149 IPC	To undergo RI for 6 months.	-	-
		323 IPC	To undergo RI for 6 months	-	-

All the sentence shall run concurrently. Period of detention, if already undergone by accused in this case, is ordered to be set off against the substantive sentences. Copy of this judgment be provided to convict free of costs. File be consigned to the record room after due compliance.

Pronounced:
25.9.2018

*(Gursher Singh),
Judicial Magistrate 1st Class,
Hoshiapur.
UID No.PB0380."*

Against the above-said judgment, an appeal has been filed, which is stated to be pending. During the pendency of the said appeal, a compromise has been effected between the parties and the parties had appeared before the Illaqa Magistrate and as per the report of the Illaqa Magistrate, the compromise is genuine and bona fide.

Learned counsel for the petitioners has submitted that the compromise is genuine and bona fide and has referred to the judgment of a Co-ordinate Bench of this Court in ***CRM-M-17272-2015 dated 28.01.2016*** titled as ***“Ram Parkash and others Vs. State of Punjab and others”*** to contend that under similar circumstances, the petition under Section 482 Cr.P.C. was entertained and the FIR with all subsequent proceedings was quashed and even the judgment of conviction was set aside on the basis of compromise.

Learned counsel for the petitioners has also relied upon the latest judgment dated 29.09.2021 of the Hon'ble Supreme Court of India

in *Criminal Appeal no.1489 of 2012* titled as “*Ramgopal & Anr. vs. The State of Madhya Pradesh*” and connected matter and has prayed that the present petition be allowed.

Learned counsel for the State of Punjab has opposed the present petition for quashing and submitted that in the present case, the petitioners have already been convicted.

This Court has heard learned counsel for the parties.

The Hon'ble Supreme Court of India in *Ramgopal and Anr.'s* case (supra) has discussed in detail the powers of the High Court under Section 482 Cr.P.C. along with other ancillary issues. The relevant portion of said judgment is reproduced hereinbelow:-

"2. The prosecution version, arising out of FIR dated 3rd November 2000, Police Station Ambah, Morena, M.P. is that on account of certain monetary dispute, the Appellants abused and assaulted Padam Singh (Complainant). Appellant No.1 is alleged to have struck the Complainant with a pharsa, which resultantly cut off the little finger of his left hand. Appellant No.2 also struck lathi blows on the body of the Complainant. Appellants were thereafter committed for trial under Sections 294, 323 and 326 read with 34 of Indian Penal Code, 1860 (hereinafter, 'IPC') and Section 3 of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989. Upon analyzing the evidence, the Learned Judicial Magistrate(FC), Ambah, convicted the Appellants under Sections 294, 323 and 326 read with 34 IPC with a maximum sentence of three years under Section 326 read with 34 IPC.

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12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non compoundable. The High Court can indubitably evaluate the

consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh & Ors. vs. State of Punjab & Ors. and Laxmi Narayan (Supra).

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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.”

A perusal of the abovesaid judgment would show that it has been held that the extra ordinary power is enjoined upon a High Court under Section 482 Cr.P.C. which can be invoked beyond the metes and bounds of Section 320 Cr.P.C. It has further been observed that criminal proceedings involving non heinous offences can be annulled irrespective of the fact that trial has already been concluded and appeal stands dismissed against conviction and that handing out punishment is not the sole form of delivering justice. Thus, it goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident. A Coordinate Bench of this Court in ***Ram Parkash's case (supra)***, had allowed a petition under Section 482 Cr.P.C. under similar circumstances. The relevant portion of the said judgment is reproduced hereinbelow:

“Prayer in this petition filed under Section 482 Cr.PC is for quashing of the FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC (subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar, on the basis of compromise dated 06.02.2015(Annexure P-4) and all other subsequent proceedings arising therefrom including the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the accused-petitioners, were convicted and sentenced...”

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Quashing of the aforesaid FIR and setting aside of the impugned judgment and order of sentence dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, is sought on the basis of compromise dated 06.02.2015 (Annexure P-4), entered into between the parties during the pendency of the appeal before this Court.

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*This Court in the case of **Sube Singh and another Versus State of Haryana and another 2013(4) RCR (Criminal) 102** has considered the compounding of offences at the appellate stage and has observed that even when appeal against the conviction is pending before the Sessions Court and parties entered into a compromise, the High Court is vested unparallel power under Section 482 Cr.PC to quash criminal proceedings at any stage so as to secure the ends of justice and has observed as under:-*

“15. The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.

*16. As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in **Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) R.C.R. (Criminal) 910 : (2008)5 SCC 794**, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.*

17. *The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.*

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21. *In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.*

22. *Consequently and for the reasons afore-stated, we allow this petition and set aside the judgement and order dated 16.03.2009 passed in Criminal Case No. 425-1 of 2000 of Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise.*

Resultantly, the appeal preferred by the petitioners against the above-mentioned order dated 16.03.2009 would be rendered

infructuous and shall be so declared by the first Appellate Court at Hisar.”

*Similarly, in the case of **Baghel Singh Versus State of Punjab 2014(3) RCR (Criminal) 578**, whereby the accused was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for two years, the parties entered into compromise during the pendency of the appeal. This Court while relying upon the judgment of **Lal Chand Versus State of Haryana, 2009 (5) RCR (Criminal) 838 and Chhota Singh Versus State of Punjab 1997(2) RCR (Criminal) 392** allowed the compounding of offence in respect of offence under Section 326 IPC at the appellate stage with the observation that it will be a starting point in maintaining peace between the parties, such offence can be compounded.*

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Accordingly, FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar and all subsequent proceedings arising therefrom, qua the accused petitioners, are quashed, on the basis of compromise dated 06.02.2015 (Annexure P-4), subject to payment of costs of Rs.25,000/-, to be deposited with the Punjab State Legal Services Authority, Chandigarh.

Consequently, the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, are set aside subject to payment of cost.”

A Co-ordinate Bench of this Court in a judgment dated 09.03.2017 passed in CRR no.390 of 2017 titled as **“Kuldeep Singh vs. Vijay Kumar and another”** as held as under:-

*“Reliance can be placed on **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298 and Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**. The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

*The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**, would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.*

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

*The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in **Damodar S. Prabhu's case (supra)** to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”*

Reliance in the abovesaid judgment was also placed upon the judgment of the Hon'ble Supreme Court in **Damodar S. Prabhu's case (supra)** and thus, as per settled law, this Court has the power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

Keeping in view the law laid down in the abovesaid judgment, more so, the judgment of the Hon'ble Supreme Court of India in **Ramgopal & Anr's case (supra)**, the relevant parameters for consideration as laid down by the said judgment, would be considered by this Court. Firstly, the occurrence which has been involved in the present petition can be categorized as a purely personal / criminal act of private nature. Secondly, the injuries which have been caused are not dangerous to life and do not appear to exhibit element of mental depravity or commission of an offence of such a serious nature, that quashing the criminal proceedings of such like cases would override public interest.

Thirdly, in view of the injuries and the offence, it would be immaterial that the petitioners have been convicted by the Judicial Magistrate Ist Class. Fourthly, the compromise is without any coercion or compulsion and has been entered into willingly and voluntarily as per the report of Judicial Magistrate Ist Class, Hoshiarpur. Fifthly, the occurrence took place in the year 2011 and there is nothing to show that any untoward incident has taken place after the same. Sixthly, the object of administration of the criminal justice system would remain unaffected on acceptance of the said amicable settlement between the parties and /or resultant acquittal of the petitioners.

Thus, keeping in view the above-said facts and circumstances, the present petition is allowed and DDR No.26 dated 20.10.2011 registered under Sections 323, 324, 148, 149 of the Indian Penal Code, 1860 in FIR No.130 dated 20.10.2011 registered at Police Station Bullowal, District Hoshiarpur (Annexure P-1) and all the subsequent proceedings arising therefrom including judgment and order of conviction dated 25.09.2018 passed by the Judicial Magistrate 1st Class, Hoshiarpur, are set aside/quashed, qua the petitioners.

July 12, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No