

241

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

**CRM-M-21119-2022
Date of Decision: 07.12.2022**

Anuj Kalia

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Jasneet Mehta, Advocate
for the petitioner.

Mr. Harjinder Singh, AAG, Punjab
for respondent No.1/State.

Mr. Santokh Singla, Advocate for
Mr. S.P. Khera, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing of FIR No.228 dated 17.08.2019 (Annexure P-1), under Sections 406, 420 and 120-B IPC, registered at Police Station City Kapurthala, District Kapurthala, and all consequential proceedings arising therefrom on the basis of compromise dated 23.09.2019 (Annexure P-2).

On 17.05.2022, a co-ordinate Bench of this Court had passed the following order:-

“Instant petition has been filed for seeking quashing of FIR No.228 dated 17.08.2019 under Sections 406, 420 and 120-B of the IPC registered at Police Station City Kapurthala, District Kapurthala and all consequential proceedings arising

therefrom on the basis of compromise dated 23.09.2019 (Annexure P-2).

Notice of motion.

Ms. Amarjit Kaur Khurana, DAG Punjab appears and accepts notice on behalf of respondent-State.

Mr. S.P. Khera, Advocate appears on behalf of respondent No.2 and admits the execution of the compromise effected between the parties.

The parties are directed to appear before the Illaqa Magistrate/Trial Court on 31.05.2022 or any other date convenient to the Illaqa Magistrate/Trial Court for recording their statements as to genuineness of the compromise executed between the parties.

The Illaqa Magistrate/trial Court is directed to submit a report along with copies of statements of parties on or before the next date of hearing containing the following information as well:-

- (i) Number of persons arrayed as accused in FIR;*
- (ii) Whether any accused is proclaimed offender;*
- (iii) The stage of trial/proceedings;*
- (iv) Whether the compromise is genuine, voluntary, and without any coercion or undue influence.*
- (v) Whether the compromise has been effected with all accused persons and with all the complainant/injured.*

To come up for further consideration on 30.08.2022.

Response, if any, may also be filed by the State on or before the adjourned date.”

In pursuance of the abovesaid order, a report has been submitted by the Chief Judicial Magistrate, Kapurthala. The relevant portion of the said report is reproduced hereinbelow:-

“ - x - x -

5) *So in this way, on the basis of the statements made by both the parties it has become crystal clear that:*

a) *There are ten persons namely Vinod Joshi, Shashi Kumari*

Sharma, Hari Ram, Mahesh Marriya, Sonik Marriya, Harmeet Singh, Manish Grover, Ricky, Ritika, Anul Kalia arrayed as accused in FIR.

b) As per statement of Investigation officer out of the above said ten accused, five accused have been declared proclaimed person i.e. (1) Vinod Joshi, (2) Shashi Kumari Sharma, (3) Mahesh Marriya, (4) Sonik Marriya, (5) Ritika.

(c) The Challan has been presented in the Court and case is fixed for service of accused Manish Garover and Harmeet Singh.

(d) The compromise effected between the complainant namely Genious Chaudhary and accused Anuj Kalia is genuine, voluntary and without any coercion or undue influence.

(e) The compromise has not been effected with all the accused. However the compromise has been effected between complainant and one accused only namely Anuj Kalia. There is one complainant namely Genious Chaudhary.

- x - x -”

A perusal of the said report would show that the compromise has been found to be genuine, without any pressure or undue influence.

It is the submission of learned counsel for the petitioner that in present FIR No.228 dated 17.08.2019, there are ten accused, however respondent No.2/complainant has entered into a compromise only with the petitioner in this case; accordingly, a prayer has been made that the abovesaid FIR may kindly be quashed only against the petitioner and the proceedings may go on against the other accused in the said FIR.

Learned counsel for respondent No.2 has again reiterated that the matter has been settled and compromised only between the petitioner in this case and respondent No.2/complainant so as to bring peace and amity between the parties. Accordingly, it is submitted that present FIR No.228

dated 17.08.2019 may kindly be quashed only against the petitioner herein

and the proceedings may be directed to go on against the other accused in the said FIR.

The issue regarding quashing of FIR against one or few of many accused and allowing the proceedings to continue against the other co-accused was subject matter before various Courts on different occasions and considering totality of facts and circumstances, the Courts have permitted quashing of FIR qua some of accused and at the same time, the proceedings have been allowed to continue against other co-accused. Some of the decisions in this regard are as follows:

In “*Jayrajsinh Digvijay Singh Rana v. State of Gujarat*”, **2012(12) SCC 401**; Hon'ble Apex Court quashed the FIR where the compromise was effected by one of the accused with the complainant, by observing as under:

“...In the case on hand, irrespective of the earlier dispute between Respondent No. 2-the complainant and the appellant being Accused No. 3 as well as Accused Nos. 1 and 2 subsequently and after getting all the materials, relevant details etc., the present appellant (Accused No. 3) sworn an affidavit with bona fide intention securing the right, title and interest in favour of Respondent No. 2 herein-the Complainant. In such bona fide circumstances, the power under Section 482 may be exercised. Further, in view of the settlement arrived at between Respondent No. 2-the complainant and the appellant (Accused No. 3), there is no chance of recording a conviction insofar as the present appellant is concerned and the entire exercise of trial is destined to be an exercise in futility. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power under section 482 of the Code even in offences which are not compoundable under Section 320, may quash the prosecution. However, as observed in Shiji (supra), the power under Section 482 has to be exercised

sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In other words, the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.

10. In the light of the principles mentioned above, inasmuch as Respondent No. 2-the Complainant has filed an affidavit highlighting the stand taken by the appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the appellant herein (Accused No. 3) is concerned.

11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable under Sections 467, 468, 471, 420 and 120B of Indian Penal Code insofar as the appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above...”

Partial or part quashing of FIR only qua the accused/offender with whom the complainant has compromised has also been upheld in **“Lovely Salhotra and Anr. v. State, NCT of Delhi”, 2017 (3) R.C.R. (Criminal) 85**, vide judgment dated 10.04.2017, passed by the Hon'ble Apex Court; wherein it was observed to the effect that it could not be held that the FIR cannot be quashed in part where no offence was made out against the accused who sought quashing of the FIR. The observations in paragraphs 3 and 6 of the said verdict of the Apex Court are to the following effect:

"3. We have taken into account the fact of the matter in question as it appears to us that no cognizable offence is made out against the appellant-herein. The High Court was wrong in

holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants-herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No. 2- herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos.2, 3, 4 and 6 prima facie.

- x - x -

6. *Accordingly, we set aside the order of the High Court and quash the FIR qua the appellants-herein."*

In "**Vijay Kumar Gupta v. State, Government of NCT of Delhi**" in **Crl.M.C. No.2289/2013**, the Delhi High Court made the following observations in paragraph No. 7 thereof:

"7. Looking into the facts and circumstances of the case and the fact that the petitioners have paid the loan/settlement amount to the Respondent No. 2 and nothing remains to be adjudicated further, to remove the hurdle in the personal life of the present petitioners for leading better and peaceful life and to meet the ends of justice, I deem it appropriate to quash the FIR No. 107/2003, under Section 406/420/468/471 Indian Penal Code, 1860, registered at Police Station - Parliament Street, Delhi qua against the petitioners, namely Vijay Kumar Gupta, Raj Kumar Sharma and Vinod Chaudhary only to the extent of their role in commission of the alleged offence."

In "**Sarabjit Singh v. State of Punjab**", 2007(3) RCR (Criminal) 479 (P&H), money was taken by the accused in the said case for sending son of the complainant abroad, but he was sent to some other destination. The complainant had settled the dispute with the petitioner in the said case but not with the other accused, who had also filed the petition in this Court for quashing of the complaint. This Court quashed the complaint qua the petitioner in the said case by making it clear that the

proceedings against the other accused would continue.

In “*Gurtej Singh vs. State of Haryana*”, 2010(3) RCR (Criminal) 660 (P&H), it was held as under:

“6. The present dispute is purely personal in nature and the compromise has been arrived at between the petitioner and complainant. The said compromise has been arrived at between the two without any pressure. The complainant has no objection if the said FIR is quashed qua the present petitioner.

7. Taking into account the allegations as well as the statement of the complainant and the matter being totally personal in nature, there is no impediment in the way of this Court to quash the present FIR at least qua the petitioner.

8. Keeping in mind the decisions rendered by this Court in the cases of Parambir Singh Gill, Kulwinder Singh as well as the decision rendered by the Hon'ble Supreme Court in the case of Madan Mohan Abbot (supra) as also the facts of the present case, the compromise deserves to be accepted. Thus, it would be in the interest of justice to quash FIR No. 94 dated 03.07.2008 under sections 420, 467, 468, 471, 120B of Indian Penal Code, Police Station Pinjore, District Panchkula as well as further proceedings arising out of the same for keeping peace, harmony as well as to reduce friction in the society qua the petitioner only.

9. Accordingly, the aforesaid FIR and further proceedings arising out of the same are hereby quashed qua the petitioner whereas the proceedings against other accused shall continue...”

Keeping in view the aforementioned position, it is noticed that the present petition, which has been filed by one accused, namely Anuj Kalia, out of ten accused, seeking quashing of FIR in question on the basis of compromise; thus, is a case of partial compromise which is permissible as per the judgments referred above.

This Court has heard learned counsel for the parties and has perused the file. After perusing the report submitted by the trial Court, this Court finds that the matter has been amicably settled between the petitioner and respondent No.2/complainant.

Hon'ble Apex Court in the case of “**Gian Singh Versus State of Punjab and another**”, 2012(4) RCR (Criminal) 543 has held as under:-

“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 pre-dominatingly 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 personnel 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.”

In “*Shakuntala Sawhney v. Kaushalya Sawhney*”, (1979) 3

SCR 639, at P 642, Hon'ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

Considering the entire facts, compromise arrived at between the parties, statements of the parties recorded before the Illaqa Magistrate/Trial Court and also report dated 12.07.2022, submitted by the Chief Judicial Magistrate, Kapurthala, since the parties have arrived at a compromise by amicably settling their disputes and have decided to live in peace, accordingly, the aforesaid FIR No.228 dated 17.08.2019 under Sections

406, 420 and 120-B of the IPC registered at Police Station City Kapurthala, District Kapurthala and all consequential proceedings arising therefrom, are hereby quashed **qua the petitioner herein only**, however, the same would be subject to payment of costs of Rs.10,000/- to be deposited by the petitioner with the **“Poor Patients' Welfare Fund, PGIMER, Chandigarh”** and the said amount would be spent for the treatment of poor patients within the knowledge of its Medical Superintendent.

It is clarified that the proceedings against other accused shall continue.

Allowed in the aforesaid terms.

All pending application(s), if any, shall stand disposed of.

07.12.2022

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No