

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

CRM-M-22488-2022

Date of Decision: 16.08.2022

RAJEEV KUMAR AND ANOTHER

...Petitioners

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Lupil Guputa, Advocate
for the petitioners.

Mr. Ajay Pal Singh Gill, DAG Punjab.

Mr. Rohit Sharma, Advocate
for the respondent No. 2.

JAGMOHAN BANSAL J. (Oral)

The petitioners, through the instant petition under Section 482 Cr.P.C., are seeking quashing of FIR No. 26, dated 14.04.2021 (Annexure P-1) under Sections 323, 324, 34 and 326 IPC registered at Police Station City Mamdot, District Ferozepur and all consequential proceedings arising therefrom, on the basis of compromise (Annexure P-2).

On 23.05.2022, a Co-ordinate Bench of this Court has passed the following order:-

"The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.26 dated 14.04.2021 under Sections 323, 324, 34, 326 of the IPC registered at Police Station, Mamdot, District Ferozepur (Annexure P-1) and all consequential proceedings arising therefrom on the basis of compromise dated 21.12.2021 (Annexure P-2) effected between the parties.

Notice of motion.

At this stage, Mr. M.S. Nagra, Asstt. A.G. Punjab.

appears and accepts notice on behalf of respondent No.1-State.

Mr. Rohit Sharma, Advocate appearing on behalf of respondent No.2 admits the execution of compromise dated 21.12.2021 (Annexure P-2) and filed Power of Attorney of Mr. Arun Kumar Gupta, Advocate in the Court today which is taken on record.

The parties are directed to appear before the Illaqa Magistrate/trial Court on 07.06.2022 or any other date convenient to the Court for recording their respective statements with regard to compromise/settlement.

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 the accused persons and with all the complainant(s)/injured.*

To come up on 16.08.2022 for further consideration.

Reply by respondent No.1-State be filed on or before the next date of hearing, if so desired."

In terms of the aforestated order, learned JMIC, Ferozepur, has sent his report 16.07.2022 and the relevant portion of the same is reproduced below:

"In view of the statements suffered by both the parties following information is hereby sent to your goodself:-

- i. As per statement of I.O., there are two accused arrayed in the FIR namely Rajeev Kumar s/o Baldev Raj and Sanjeev Kumar s/o Tilak Raj.*
- ii. As per statement of Investigating Officer none of the accused has been declared Proclaimed Offender.*
- iii. No challan has been presented in this case till date.*
- iv. Compromise is genuine, voluntary and without any coercion or undue influence.*

vi. As per statment of parties compromise has been effected between the parties Accused/Petitioner Sanjeev Kumar s/o Tilak Raj who has not appeared to record his statement.

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.

Learned counsel appearing on behalf of respondent No.2 reiterates the factum of compromise and his concurrence to the FIR and all the other consequential proceeding being quashed.

A five-Judge Bench of this Court in *Kulwinder Singh v.State of Punjab* [(2007) 4 CTC 769] was called upon to determine, inter alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The larger Bench framed the following guidelines :-

“21. ... ‘(a) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

(b) Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

(c) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

(d) Minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate settlement between the

parties. Yet another offence which remains non-compoundable is Section 506(II) IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148 IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148 IPC compoundable offences by amending the schedule under Section 320 Cr.P.C.

(e) The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter VII (relating to army, navy and air force) must remain non-compoundable.

(f) That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution.'

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 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'."

22. xxxxx

23. No embargo, be in the shape of Section 320(9) CrPC, or any other such curtailment, can whittle down the power under Section 482 CrPC.

24. ***

25. The only inevitable conclusion from the above discussion is that there is no statutory bar under CrPC 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 CrPC, in order to prevent the abuse of law and to secure the ends of justice. The power under Section 482 CrPC is to be exercised ex debito justitiae to prevent an abuse of process of court. There can neither be an exhaustive list nor the defined parameters 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 CrPC 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 extraordinary effective instrument to maintain and control social order. The courts play role of paramount importance in achieving peace, harmony and everlasting 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.”

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.*

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 wastage of judicial time and there appears to be no chances of conviction.

In view of the report of the learned Judicial Magistrate Ist Class, Ferozepur 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** and also by the Full Bench of this Court in **Kulwinder Singh and others Vs. State of Punjab and another, [(2007) 4 CTC 769]**, the instant petition is allowed.

The aforesaid FIR No. 26 dated 14.04.2021 under Sections 323, 324, 326 and 34 of IPC registered at Police station Mamdot, District Ferozepur and consequential proceedings arising therefrom are ordered to be quashed qua the petitioners.

16.08.2022
Ajay Goswami

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No