

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25669-2020 (O&M)
Reserved on: 04.04.2022
Pronounced on: 07.04.2022

Abhishek Singh & others
...Petitioner(s)
Versus
State of Punjab & others
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Ashika Sharma, Advocate
for the petitioners.

Mr. H.S. Sitta, AAG, Punjab.

Mr. Arpan Singh, Advocate
for respondents no.2 and 3.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
115	28.07.2020	Mehta, District Amritsar	307, 148, 149 IPC and Section 25, 27, 54, 59 Arms Act

The petitioners, arraigned as accused in the above captioned FIR, have come up before this Court under Section 482 CrPC for quashing of the FIR and all consequential proceedings based on the compromise with the complainant/victim(s).

2. During the pendency of the petition, the accused and the complainant/injured have compromised the matter, and its copy is annexed with this petition as Annexure P-3.
3. After that, the petitioners came up before this Court to quash the FIR, and in the quashing petition, the injured who is a minor, along with his father have been impleaded as respondents.
4. On 15 Dec. 2020, the victim/aggrieved person Gursewak Singh (Minor) (R-3), along with his father Amarjeet Singh (R-2) stated before the SDJM Baba Bakala Sahib that there would be no objection if the Court quashes this FIR and consequent proceedings. On the same date, member panchayat Manjit Singh also made a statement that the compromise was made with mutual consent of parties, without any pressure and coercion. Petitioners no. 1 to 3 also made similar statement. Although the petitioner no. 4 Jaskaran Singh did not appear before the court but he is also a signatory to the compromise deed Annexure P-3., and thus, his absence is

inconsequential because it the victim whose statement mattered, and stands recorded favouring the compromise. As per the concerned court's report dated 18th January, 2021, the parties consented to the quashing of FIR and consequent proceedings without any threat.

ANALYSIS & REASONING:

5. State has filed a reply to the petition and opposes the compromise primarily keeping in view the heinous nature of offence. The State's counsel has severely opposed this compromise and seeks dismissal of the petition because of the heinous nature of the offence.

6. In the present case, the offences under section 307 of Indian Penal Code, 1860 (IPC) is not compoundable under Section 320 of Code of Criminal Procedure, 1973 (CrPC). However, in the facts and circumstances peculiar to this case, the prosecution *qua* the non-compoundable offences can be closed by quashing the FIR and consequent proceedings.

7. It shall be appropriate to refer to the relevant portions of compromise deed, Annexure P-3, as per which both the parties are residents of same village and have cordial relations with each other, which reads as under:-

- "1. Both the parties are resident of same village and have cordial relations with each other. That on the date of occurrence the second party was playing near the house of first party and first party told them to go to play ground and restrain them from playing in the street. Few hour later some un-identified persons who had their face muffled, fired at the son of the first party which hit on the Right side of the stomach of the son of first party first party. It was dark at that time and first party could not identify the person who have attacked and FIR No. 0115 dated 28-07-2020, under section 307, 148, 149, IPC and 25/27/54/59 Arms Act was registered in police station Mehta, District Amritsar on the statement of first party against the second party on suspicion at the instance of some native of the village, but later on it is revealed that second party was not involved in this case.
2. Whereas now with the intervention of respectable the compromise is affected between both the parties and now both the parties have agreed to end this matter by mutual consent to improve the peace and harmony among the parties and through this agreement they have agreed to end ill will and malice against the each other and this litigation, the first party has agreed not to pursue his claim and now he do not want to further proceed with his case. That both the parties would approach and appear before The Punjab & Haryana High Court for quashing the abovesaid FIR."

8. The accused/petitioners no. 1 to 3 were just 19 years of age and the fourth petitioner/accused aged 21. All the accused are in formative years of their lives and the continuation of trial would severely impact their careers and life goals. The parties belong to the same village and must be living there for generations and might continue to live, and who knows for how long. In the closely-knit village community, when the parties have buried their hatchets, the continuation of criminal proceedings will not advance the reformative purposes of jurisprudence just for the sake of deterrence.

9. The following aspects would be relevant to conclude this petition: -
- a) The accused and the private respondents have amicably settled the matter between them in terms of the compromise deed and the statements recorded before the concerned Court;
 - b) A perusal of the documents reveal that the settlement has not been secured through coercion, threats, social boycotts, bribes, or other dubious means;
 - c) The victim has willingly consented to the nullification of criminal proceedings;
 - d) There is no objection from the private respondents in case present FIR and consequent proceedings are quashed;
 - e) In the given facts, the occurrence does not affect public peace or tranquillity, moral turpitude or harm the social and moral fabric of the society or involve matters concerning public policy;
 - f) The rejection of compromise may also lead to ill will. The pendency of trial affects career and happiness;
 - g) There is nothing on the record to prima facie consider the accused as an unscrupulous, incorrigible, or professional offender;
 - h) The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family, community, and society;
 - i) The exercise of the inherent power for quashing the conviction, sentence and all previous proceedings is justified to secure the ends of justice.

JUDICIAL PRECEDENTS ON QUASHING UNDER SECTION 307 IPC:

10. In Ram Prasad v State of Uttar Pradesh, (1982) 2 SCC 149, Supreme Court holds,

The appellants, who are the accused and the complainant, Shri Ram, who was the person injured as a result of firing, have appeared before us and stated that they wish to compound the offence. The offence for which both the appellants have been convicted is one under Section 307 read with Section 34 of the Indian Penal Code, but having regard to the nature of the injury sustained by Shri Ram, we think that the proper offence for which the appellants should have been convicted was under Section 324 read with Section 34. Shri Ram received only one injury on the shoulder and that was also in the nature of simple hurt. We would, therefore, convert the conviction of the appellants to one under Section 324 read with Section 34. Since the parties belong to the same village and desire to compound the offence, we think, in the larger interest of peace and harmony between the parties and having regard to the nature of the injury, that it would be proper to allow the parties to compound the offence.

11. In Mahesh Chand v State of Rajasthan, 1990 SCC 781, Hon'ble Supreme Court holds as under:

[2]. The accused were acquitted by the trial court, but they were convicted by the High Court for the offence under section 307 Indian Penal Code This offence is not compoundable under law. The parties, however, want to treat it a special case, in view of the peculiar circumstances of the case. It is said and indeed not disputed that one of the accused is a lawyer practising in the lower court. There was a counter case arising out of the same transaction. It is said that this case has already been compromised. The decision of

this Court in *Suresh Babu v. State of Andhra Pradesh*, 1987(2) JT 361, has been also referred to in support of the plea for permission to compound the offence.

12. In *DimpeyGujraj v Union Territory*, (2013) 11 SCC 497, Supreme Court holds,

[5]. In light of the above observations of this court in *Gian Singh v. State of Punjab* and another, 2012(4) R.C.R.(Criminal) 543 : 2012(4) Recent Apex Judgments (R.A.J.) 549 : 2012(5) CTC 526 (SC) we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Section 147, 148, 149, 323, 307, 452 and 506 of the Indian Penal Code at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed.

13. In *State of Rajasthan v. Shambhu Kewat*, (2014) 4 SCC 149, Hon'ble Supreme Court holds,

[14] We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in *Gian Singh*, and has committed a mistake in taking the view that, the injuries were caused on the body of Abdul Rashid in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in *Gian Singh* that the Court, while exercising the power under Section 482, must have "due regard to the nature and gravity of the crime" and "the societal impact". Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against "an individual", rather than against "the society at large".

[15] We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

[16] We are, therefore, inclined to allow this appeal and set aside the judgment of the High Court. The High Court was carried away by the settlement and has not examined the matter on merits, hence,

we are inclined to direct the High Court to take back the appeal to its file and decide the appeal on merits.

14. In Yogendra Yadav v State of Jharkhand, 21.7.2014, Supreme Court holds,

[4]. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab*, 2012(4) R.C.R.(Criminal) 543 : 2012(4) Recent Apex Judgments (R.A.J.) 549 : (2012)10 SCC 303). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

15. In State of Madhya Pradesh v. Dhruv Gurjar, (2019) 5 SCC 570, the FIR was registered under S 307, 294 and 34 IPC based on the allegations that Dhruv Gurjar (accused) armed with a 12-bore gun, and his gang, visited the house of the complainant with a view to take revenge with his nephew. When the complainant told them that his nephew was not present at home, on this Dhruv Gurjar fired, and the pellets struck on his forehead, left shoulder and left ear. Disagreeing with the order of High Court quashing the FIR, Hon'ble Supreme Court held,

[16.1] However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 of the Cr.P.C. From the impugned judgments and orders, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgments and orders passed by the High Court, it appears that the High Court has mechanically quashed the respective FIRs, in exercise of its powers under Section 482 Cr.P.C. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in the case of *State of Maharashtra vs. Vikram Anantrai Doshi*, 2014 15 SCC 29, the Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence.

16. The contents of compromise deed and its objectives point towards its acceptance, in the light of the judicial precedents mentioned above

17. In Shiji @ Pappu v. Radhika, (2011) 10 SCC 705, Hon'ble Supreme Court holds,

[13]. It is manifest that simply because an offence is not compoundable under Section 320 Indian Penal Code is by itself no reason for the High Court to refuse exercise of its power under Section 482 Criminal Procedure Code. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Criminal Procedure Code on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Criminal Procedure Code are not for that purpose controlled by Section 320 Criminal Procedure Code. Having said so, we must hasten to add that the plenitude of the power under Section 482 Criminal Procedure Code by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing 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. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that 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. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

18. In Parbatbhai Aahir v State of Gujarat, (2017) 9 SCC 641, a three Judges Bench of Hon'ble Supreme Court, laid down the broad principles for quashing of FIR, which are reproduced as follows: -

[16]. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions:

16 (i) 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 (ii) 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 (iii) 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 (iv) 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 (v) 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 (vi) 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 (vii) 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 (viii) 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 (ix) 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 (x) There is yet an exception to the principle set out in propositions (viii) and (ix) 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.

19. In Ramgopal v. The State of Madhya Pradesh, *Cr.A 1489 of 2012*, decided on 29.09.2021, Hon'ble Supreme Court holds,

[11]. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

[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 those 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.* [(2014) 6 SCC 466, 29], and *Laxmi Narayan* [(2019) 5 SCC 688, 15].

[14]. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed between two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

20. 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.

21. In Himachal Pradesh Cricket Association v. State of Himachal Pradesh, 2018 (4) Crimes 324, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained.

In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stand vitiated.”

22. Considering the entire facts, compromise, and in the light of the above-mentioned judicial precedents, I believe that continuing these proceedings will not suffice any fruitful purpose whatsoever.

23. Given the nature of allegations and the other circumstances peculiar to this case, the petitioners/accused shall surrender all weapons, firearms, ammunition, if any, and the arms license to the concerned authority within thirty days from today and inform the concerned SHO about the compliance, however, if the police chief of the concerned district, (S.P./S.S.P./Commissioner), gives written permission by passing a reasoned order to arrive at such a decision to retain the firearms and license and in that case, this condition shall not be applicable. If the petitiones do not have such licence, then no such permission should be granted to acquire firearms and ammunition. However, if the police chief of the concerned district (S.P./S.S.P./Commissioner) gives written permission through a reasoned order to get the firearms and license, then this condition shall not be applicable.

24. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the FIR and all subsequent proceedings *qua* the petitioners. The bail bonds of the petitioners are accordingly discharged. All pending application(s), if any, stand closed.

Petition allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

April 07, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.