

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

CRM-M No. 28519 of 2020

Date of Decision: 04.07.2022

Sakandar Singh alias Sikander Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Gursharan Kaur Mann, Sr. Advocate, assisted by
Mr. Gursharan Singh, Advocate
for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab
for respondent No. 1 / State.

Mr. Sunil Kumar, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition cast under Section 482 Cr.P.C., the petitioner is seeking quashing of FIR No. 0091 of 23.06.2020 (Annexure P-1), registered against him at Police Station Verka, District Police Commissionerate Amritsar (Punjab), constituting therein an offence under Section 307 of the Indian Penal Code, and, under Section(s) 25 / 27 of the Arms Act, 1959, and, also of all the subsequent proceedings arising therefrom, on the basis of compromise (Annexure P-2).

2. When the instant petition came up for hearing on 18.09.2020 / 05.11.2020, this Court made directions upon the Illaqa Magistrate concerned, to make a report with respect to the genuineness of compromise, and, also to intimate whether any PO proceedings are pending against any of the party.

3. The afore order makes it apparent that the petitioner had depended, upon, a compromise/settlement, arrived at, in respect of the FIR (supra) with the complainant-respondent No. 2.

4. The afore made order(s) by this Court on 18.09.2020 / 05.11.2020, has been complied with by the learned Illaqa Magistrate concerned, and, the elicited report has been placed on record. A perusal of the report, transmitted to this Court, by the learned Magistrate concerned, reveals that the settlement / compromise, arrived at *inter se* the petitioner, and, respondent No. 2, is a sequel of both, being *ad idem qua* it, besides the compromise / settlement being a sequel of no pressure or coercion, being exercised upon each other. Therefore, the learned Magistrate has reported, that the settlement / compromise, depended upon by the petitioner, for seeking quashing of the FIR (supra), is both voluntary, and, genuine.

5. The learned counsel for the parties also stated at the Bar, that all the concerned have signed the compromise deed.

6. Furthermore, the learned State Counsel, on instructions, meted to him, by the Investigating Officer (IO) concerned, submits that the challan has not yet been filed.

7. However, the learned counsel appearing for the State, has contended before this Court, that the relief, as claimed by the petitioner, in the petition, cannot be granted, as some of the offence(s) constituted against the accused-petitioner, inasmuch as the one under Section 307 of the IPC, is of an extremely grave and heinous genre, and, obviously is non-compoundable, neither with the leave of the Court, nor, this Court can proceed, to an anvil of a compromise entered into between the petitioner,

and, the victim, arrayed as respondent No. 2, rather make an order for quashing of the FIR, embodying the above offence. He supports the afore submission on the basis of the Medical Legal Report (MLR) prepared by the doctor concerned, who proceeded to examine the body of the victim, wherein, the hereinafter extracted observations are carried.

<i>Sr. No.</i>	<i>Injury Details</i>	<i>Injury Number</i>
1.	LACERATED WOUND MEASURING 0.2 CM X 0.2 CM PRESENT AT RIGHT CHEST REGION. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.	1
2	LACERATED WOUND MEASURING 0.3 CM X 0.3 CM PRESENT AT RIGHT ABDOMEN REGION. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.	2
3	LACERATED WOUND MEASURING 0.2 CM X 0.2 CM, 4 IN NUMBER, PRESENT AT RIGHT FLANK OF ABDOMEN. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.	3
4	LACERATED WOUND MEASURING 0.4 CM X 0.4 CM PRESENT AT LOWER ONE THIRD OF RIGHT ARM. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.	4
5	LACERATED WOUND MEASURING 0.5 CM X 0.5 CM PRESENT AT RIGHT FOREARM, 4 IN NUMBER. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.	5
6	LACERATED WOUND MEASURING 0.1 CM X 0.1 CM PRESENT AT LITTLE FINGER OF RIGHT HAND. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.	6
7	LACERATED WOUND MEASURING 0.2 CM X 0.2 CM PRESENT AT MID OF	7

<i>Sr. No.</i>	<i>Injury Details</i>	<i>Injury Number</i>
	<i>LEFT FOREARM. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.</i>	
<i>8</i>	<i>LACERATED WOUND MEASURING 0.2 CM X 0.2 CM, 7 IN NUMBER PRESENT AT FIVE IN UPPER AND TWO IN LOWER RIGHT THIGH REGION. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.</i>	<i>8</i>
<i>9</i>	<i>LACERATED WOUND MEASURING 0.5 CM X 0.5 CM PRESENT AT UPPER RIGHT LEG. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.</i>	<i>9</i>
<i>10</i>	<i>LACERATED WOUND MEASURING 0.4 CM X 0.4 CM PRESENT AT RIGHT SIDE OF FACE JUST INFROENT OF RIGHT PINNA. CLOTTED BLOOD PRESENT. DEPTH CAN NOT BE ASCERTAINED. PAIN AND TENDERNESS PRESENT.</i>	<i>10</i>

8. Furthermore, the learned State Counsel also refers to the report of the Ballistic Expert, relevant portion whereof becomes extracted hereinafter, and, wherein, there is a categorical echoing with respect to the cartridges as allegedly fired, and, allegedly striking the apposite regions of the body of the victim, rahter becoming actually fired therefrom.

“ **RESULT OF EXAMINATION**

On the basis of careful scientific examination it has been concluded that:-

- 1. One 12 bore DBBL gun (hockey butt) bearing No. 29768-01 marked W/1 contained in parcel 'B' referred above is in working condition.*
- 2. One 12 bore 'KF' cartridge case marked C/1 contained in parcel 'A' had been fired through right barrel of 12 bore DBBL gun bearing No. 29768-01 marked W/1 contained in parcel 'B' referred above. ”*

9. The learned State Counsel consequently argues, that even if the victim of the offence, arrayed as co-respondent No. 2 in the present petition, rather during the course of his stepping into the witness box, resiles from his previously made statement, yet when the Public Prosecutor concerned, after obtaining the leave of the learned trial Judge concerned, proceeds to cross-examine him, and, when during course thereof, confronts him with the report of the Ballistic Expert concerned, thereupon, when the report of the Ballistic Expert comprises the best Forensic Expert evidence, therefore, there is every likelihood of its underwhelming the evidentiary worth, if any, of the victim-injured, hence negating the guilt of the accused. Therefore, he also argues that there is every likelihood of the petitioner becoming convicted of the offence constituted under Section 307 of the IPC and, or, that the makings of a trial, upon, the present petitioner would, not be either futile nor would his being put to trial result in the causing(s) of humiliation(s) or harassment(s) to him.

10. However, the vigour of the afore made submission becomes completely negated, in the face of the factum that the settlement / compromise, which has been entered amongst the petitioner, and, respondent No. 2, became entered into at the pre-charge stage, also especially when in respect of acceptance of a compromise arrived at, rather at the above stage, it has been ex-postulated in paragraph – 12 / 29.7 of the verdict made by the Hon'ble Apex Court in case case title ***“State of Madhya Pradesh Vs. Deepak and others”***, ***Criminal Appeal No. 1985 of 2014***, decided on **10.09.2014**, para(s) whereof becomes extracted hereafter, qua it comprising a valid parameter to constrain the High Court, to, in a

compromise based quashing petition, proceed to grant the craved for indulgence to the accused.

*“12. We would like to mention at this stage that in some cases offences under Section 307 IPC are allowed to be compounded, whereas in some other cases it is held to be contrary. This dichotomy was taken note of by referring to those judgments, in the case of **Narinder Singh & Ors. v. State of Punjab & Anr., (2014) 6 SCC 466**, and by reconciling those judgments, situations and circumstances were discerned where compounding is to be allowed or refused. To put it simply, it was pointed out as to under what circumstances the Courts had quashed the proceedings acting upon the settlement arrived at between the parties on the one hand and what were the reasons which had persuaded the Court not to exercise such a discretion. After thorough and detailed discussion on various facets and after revisiting the entire law on the subject, following principles have culled out in the said decision:*

29 to 29.6 xxxxxx

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after *prima facie* assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a

position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

11. Insofar as the hereinabove made submission by the learned State Counsel is concerned, and, as made dependent upon the report of the Forensic Expert concerned, and which he argues to be underwhelming rather the impact, if any, of the victim-injured, resiling from his previously recorded statement in writing, this Court is of the view, that the report of the Forensic Expert, may not also embody any incriminatory evidence of the gravest sanctity, rather against the petitioner, as thereins, the relevant incriminatory factum appertaining to the timings of firing(s) taking place from the seized weapon, is completely amiss, nor obviously any firings therefroms can become relatable to the time of happening of the occurrence rather at the crime site. Therefore, it cannot negate the effect of the victim-injured, upon, his stepping into the witness box, rather proceeding to not his examination-in-chief, hence corroborate the narration carried his previously made statement in writing, before the IO concerned. Therefore, also in the face of the compromise, when there is every likelihood of the complainant – injured resiling from his previously made statement in writing, thereupon, when there is also every likelihood of the present petitioner, rather receiving a

verdict of acquittal from the learned trial Judge concerned. Furthermore, when but as a necessary corollary, the putting of the accused to trial, would result in subjecting him to the trauma of unnecessary harassment, and, humiliation. Consequently, this Court finds merit in the present petition.

12. Moreover, also for the reason(s) to be assigned hereinafter, rather the afore prayer, as made by the learned State counsel, cannot be accepted by this Court. The pre-eminent reason for dispelling the vigour of afore made argument, is rested, upon the factum of also a statement, being made before this Court, by the learned counsel for the petitioner, that the challan has not yet been filed.

13. The effect of the afore statement, as made with extreme vehemence by the learned counsel for the petitioner, and, also the effect of the statement made by the learned counsel appearing for the State, is that, the relevant parameters as encapsulated in a verdict of the Hon'ble Apex Court, rendered in case titled as, ***Gian Singh versus State of Punjab and another 2012(4) RCR (Criminal) 543***, inasmuch as a postulate/occurring therein, that the inherent power under Section 482 Cr.P.C., as vested in the High Court, for quashing of criminal proceedings, as/of FIR or complaint, through recourse being made to the provisions of Section 482 Cr.P.C., rather being distinct and different from the power given to a criminal Court, hence for compounding the relevant offence, hence being enjoined to become tested *viz-a-viz* the facts in hand, for apposite application thereon. However, it has also been held therein, the afore power vested in the High Court, is of the widest plenitude, with no statutory limitation, being placed thereon, yet it has to be exercised to secure the ends of justice, and, to prevent the abuse

of process of any Court. Though no straightjacket formula, has been contemplated therein, for recourse being made to the mandate of Section 482 Cr.P.C., hence for quashing of an FIR, or criminal proceedings or complaint, yet the essential rubric *viz-a-viz* its valid exercising, is comprised in the principle, that if the accused and the complainant rather enter into a valid *ad idem* settlement, and, when thereupon the conviction of the accused becomes remote and bleak. Consequently, it has been mandated, that unless the offence sought to be quashed, through the exercising of the power vested under Section 482 Cr.P.C., are not serious and heinous, inasmuch as the afore, do not embody offences appertaining to murder, rape, dacoity etc., and, or when the offences are in relation to special statutes like Prevention of Corruption Act or offences committed by public servants, while working in that capacity, thereupon it can be permissibly exercised. However, upon evident existences of embargos (supra), spelt in the verdict (supra), thereupon, the High Courts are barred, through recouring the mandate of Section 482 Cr.P.C., hence, to quash the FIR or quash the criminal proceedings appertaining to serious/heinous offences (supra).

14. It is apt to extract the relevant paragraph of the verdict made by the Hon'ble Apex Court in ***Gian Singh***'s case (supra).

“ *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.”

15. Furthermore, an immense support to the afore made view, is also derived from the judgment rendered by the Punjab and Haryana High Court in case titled as ***Vinod @ Boda and others versus State of Haryana and another 2017(1) R.C.R. (Criminal) 571***, wherein also, the above view has been reiterated.

16. Bearing in mind the hereinabove extracted paragraphs, and also bearing in mind the report, as made to this Court, by the learned JMIC, Amritsar, inasmuch as it revealing, that the accused, and, respondent No. 2 hence entering into a valid ad idem compromise, and also it being a sequel of no pressure or coercion, being exercised upon each other. Therefore, this Court deems it fit, to, after bearing all in mind the relevant parameters, enshrined in the relevant paragraphs carried in verdict (supra), to accept the settlement arrived at inter se the accused, and the complainant, dehors, the fact that may be some of the charged offences, are non-compoundable.

17. Moreover, since the alleged commission of an offence constituted under Section 307 of the IPC, does not, in the face of the above discussion rather *prima facie* appear to be so grave, and, nor is so heinous, so as to attract the rigour of the embargo (supra) foisted upon the High Court in verdict (supra). Conspicuously, also when the settlement has occurred, at the pre-charge stage, thereupon, for preserving amity, and, harmony amongst the concerned, besides when given the occurrence of a compromise at the pre-trial stage, rather the victim-complainant, or/and, the ocular witnesses to the occurrence are not likely to support the charge. In consequence the irrevering of the compromise, and, putting the accused to trial, would result in subjecting him to the trauma of unnecessary

harassment, and, humiliation. Therefore, the settlement/compromise, as validly entered into, enjoins its being reversed. Consequently, even if the afore offence is non-compoundable, this Court does not deem it fit to accept the contention(s) of the learned State counsel, that this Court, may not through recouring the mandate of Section 482 Cr.P.C., quash the FIR, especially when the case is still under investigation. In aftermath, when reiteratedly rather thereupons, the chances of the petitioner being convicted are remote as well as bleak. In sequel, the ordering for the trial of the accused, would result in harassment and humiliation, being caused to the accused, besides would defeat the ends of justice.

18. There is merit in the petition, and, the same is allowed. Consequently, after accepting the report of the learned Magistrate concerned, this Court proceeds to quash the FIR (supra).

19. Accordingly, the FIR (supra), and, also all the consequential proceedings, hence arising therefrom, are quashed qua the petitioner.

July 04, 2022

'dk kamra'

**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>