

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-537-SB-2005 (O&M)
Reserved on: 04.04.2022
Pronounced on: 18.04.2022

Khushwant Singh etc.Petitioners

Vs.

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Dinesh Maurya, Advocate for applicant-appellant No. 1.
Ms. Jaspreet Kaur, AAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
177	11.05.2004	Kotwali, Sangrur	307, 323, 324, 325 read with 34 IPC

Criminal Case no. before trial Court	Sessions Case No. 93 of 19.07.2004 Decided on: 05.03.2005
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The petitioner, who stands convicted in the trial for the FIR captioned above, by filing an application under section 482 Cr.P.C in the pending criminal appeal, for quashing the judgment of conviction, sentence, charges, and the FIR, based on the compromise with the victim(s).

2. The gist of the allegations against the petitioner(s) is that they grievously injured the complainant by giving iron rod blows. They were convicted and sentenced to undergo 03 years rigorous imprisonment for offence under Section 325/34 IPC in above mentioned FIR by order dated 05.03.2005.

3. After the conviction, and during the pendency of the appeal before this court, the Ajmer Singh (Accused no. 2) had expired way back on 22.06.2006 and the death certificate is annexed as Annexure R-1/T. Thus, the appeal filed by Ajmer Singh stands abated under section 394 Cr.P.C.

4. The Appellant/convict Khushwant Singh and the complaint/aggrieved party entered into an out of court compromise vide compromise deed dated 25-07-2017 (Annexure Ex. CX).

5. After that the appellant filed an application under section 482 Cr.P.C for quashing the conviction based on the compromise. Vide order dated 13-07-2018, this court permitted the parties to appear before the Chief Judicial Magistrate, Sangrur, for recording their statements with regard to compromise.

6. On 06.08.2018, the injured/aggrieved party Parminder Singh appeared before Chief Judicial Magistrate, Sangrur and made the following statement under oath,

"I have got registered FIR No. 177 dated 11.05.2004 under Sections 307, 325, 324, 323 read with Section 34 IPC, Police Station Kotwali, Sangrur against accused Khushwant Singh and Ajmer Singh. Ajmer Singh had died on 22.06.2006. The matter has been voluntarily compromised with accused Khushwant Singh without any pressure, coercion or undue influence and out of free will in the above said FIR. I have seen the original compromise dated 25.07.2017 upon which I identify my signatures. The original compromise is Ex. CX. So, I have no objection if accused Khushwant Singh is acquitted in CRA-S-537-SB-2005 by accepting the same and I withdraw my revision petition bearing No. CRR-1016-2005."

7. The appellant/convict also made a statement on 6-8-2018, before the CJM, Sangrur that he had entered into an out of court compromise Ex. CX, and his appeal be decided in view of the compromise.

8. The translated version of the compromise deed Ex. CX, recorded in Punjabi (Gurumukhi), would read as follows,

- "1. That party No. 1 registered a case FIR No.117 dated 11.05.2004 u/s 307/325/324/323 IPC, against party No.2 in police station Kotwali, Sangrur.*
- 2. That party No.2 was convicted in above mentioned case by the court of Fast Track Court Sangrur Sh. Jaspal Singh Chugh against this judgment party No.2 filed CRA-S-537-SB-2005 which is pending before the High Court of Punjab and Haryana Chandigarh.*

3. *That both parties are neighbor so family members and respectable resolve the dispute between the parties and got compromise effected.*
4. *That party No.1 did not want to any action against the party No.2. If Hon'ble Punjab and Haryana High Court, Chandigarh acquitted the party No.2 then party No.1 has no objection and he also withdraw the CRR-1016 of 2005.*
5. *That compromise was executed between the parties with the free will of the parties without any pressure, so that both are living peaceful life. Both are bound by the compromise. Compromise is read over and admitted correct and then signed by the parties in the presence of witnesses.*
Compromise is effected so it can use at the time of need."

9. The State filed its response through the concerned Dy. SP, and its relevant portion reads as follows:

"5. That the SHO, P.S. City-I, Sangrur further reported that in compliance of directions issued by this Hon'ble Court vide order dated 05.03.2020, the matter has been got inquired through ASI Ranjit Singh, who recorded the statement of Parminder Singh (complainant of the case) S/o Bhupinder Singh r/o Harari Road, Sangrur. Wherein, he stated that, "Khushwant Singh son of Ajmer Singh and Ajmer Singh son of Kundha Singh residents of Hareri Road, Sangur had caused me injuries and on the basis of the my statement, FIR No. 177 dated 11.05.2004 u/s 307, 325, 324, 323 IPC. P.S. Kotwali, Sangrur was registered against them. After the trial, the above said accused were convicted on 05.03.2005 by the Court of Sh. Jaspal Singh Chugh. With the intervention of respectable persons, a compromise has been got effected on 25.07.2007 between both the parties and the compromise so arrived at, is acceptable to both the parties. In case, the Hon'ble Court is quashed the FIR, then I will have no objection." True translated copy of statement of Parminder Singh (complainant of the case) is annexed as Annexure R-1/T.

6. That the perusal of the report submitted by SHO P.S. City-I, Sangrur and statement of Parminder Singh (complainant of the case) revealed that with the intervention of respectable persons, a compromise has been got effected on 25.07.2007 between both the parties and the compromise so arrived at, is acceptable to both the parties. Hence, the present application is liable to be disposed of in accordance with law."

ANALYSIS & REASONING:

10. Despite the severe opposition of the State's counsel to this compromise, the following aspects would be relevant to conclude this petition: -

- a) The convict and the aggrieved persons 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 injured if the convict is acquitted from the offence;
- 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, and professional offender;
- h) The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family, and society;
- i) The exercise of the inherent power for quashing the conviction, sentence and all previous proceedings are justified to secure the ends of justice.

11. In the present case, the DW-1 testified that the injured resided in front of the house of the convict/appellant. Thus, the parties live in the same neighborhood. The parties belong to the same village and must be living there for generations and might continue to live, but 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 reformatory purposes of jurisprudence just for the sake of deterrence.

JUDICIAL PRECEDENTS ON QUASHING OF CONVICTION BASED ON COMPROMISE:

12. In Ram Prasad and Another v. State of Uttar Pradesh, Cr.A Nos. 308-309 of 1980, decided on April 21, 1980, Hon'ble Supreme Court converted the conviction from 307 IPC to 324 IPC and after that based on compromise, accepted the compounding of offence under section 324 IPC and acquitted the appellants.

13. In Ramji Lal v. State of Haryana, (1983) 1 SCC 368, Hon'ble Supreme Court, in a matter arising against the conviction under section 325 IPC, held,

[5]. All the offences for which the appellants are convicted are compoundable and the compromise can be entered into with the permission of the court. Looking to the chastened attitude of the accused and the commendable attitude of the injured complainant, in order to restore harmony in the society, we accept the compromise. We grant permission to enter into the compromise and accept the same. We accordingly allow the appeal and set aside the conviction and sentence imposed on both the appellants. If they are on bail, their

bail-bonds will be cancelled. If they are in jail, they will be released from the jail forthwith.

14. In Mohd. Rafi v. State of U.P., 1998(2) R.C.R.(Criminal) 455, Supreme Court, the convict had gone to Hon'ble Supreme Court against his conviction by the trial Court under Sections 323 and 325 of IPC, which was upheld by Sessions and High Court. After that, the convict and the victim entered into an out-of-court compromise. Hon'ble Supreme Court analyzed the parties' affidavits filed in support of the compromise and observed that parties had willingly and voluntarily settled the matter. To maintain good relations, Hon'ble Supreme Court granted permission to them to compound the said offenses and order the acquittal.

15. In Parameswari v. Vennila, (2000) 10 SCC 348, the appellants before Hon'ble Supreme Court had been convicted under Section 494 read with Section 109 of IPC. After that, they arrived at a settlement with the complainant, in the presence of panchayatdars of their village, and placed on record the duly signed compromise, and parties filed a joint application for permission to compound the offences. While observing that the offence involved was compoundable with the wife's consent and permission of the Court, Hon'ble Supreme Court granted permission to compound the offence, and resultantly the appellants stood acquitted of the offence for which they have been held guilty.

16. In M.D. Balal Mian v. State of Bihar, 2001 AIR (SCW) 5190, out of three convicts, one was convicted under Section 376 IPC, and the other two were convicted only under Sections 325 & 323 of IPC. After the High Court confirmed the conviction and sentence, all three convicts approached Hon'ble Supreme Court. Although Hon'ble Supreme Court did not find any scope for granting special leave by the convict challenging his conviction under section 376 IPC, however, granted the other permission to the other two convicts to compound the offences under Section 320 (8) of the Criminal Procedure Code and acquitted both of them.

17. In Vuyyuru Ramachandra Rao v. State of Andhra Pradesh, 2001 AIR (SCW) 2396, the appellant had approached the Hon'ble Supreme Court against upholding the conviction under section 354 IPC. The victim of molestation came to terms with the convict and applied to compound the offence. Hon'ble Supreme Court allowed such application for compounding and resultantly acquitted the appellant under Section 320 (8) of the Criminal Procedure Code.

18. In Khursheed and others v. State of U.P., Appeal (crl.) 1302 of 2007, decided on 28-9-2007, the appellants were convicted by Trial Court under sections 325, 323 read with 34 IPC. Their appeal against conviction was dismissed by the Sessions Court and revision petition was also dismissed by High Court. The convicts approached the Apex Court and Hon'ble Supreme Court held,

[12]. An offence of causing grievous hurt punishable under Section 325 IPC is covered by sub-section (2) of Section 320 of the Code. It is thus clear that an offence punishable under Section 325 IPC is also compounded with the permission of the Court.

[13]. The parties have compounded the offences. As stated in the compromise deed, Gurfan Ahmad, complainant and his mother Kulsoom @ Bhoori (injured) did not want any action against the appellants (accused). The parties are neighbours, their houses are situated adjacent to each other and they have been living peacefully for last many years and there is no dispute among them. It is further stated that to continue sweet relationship and harmony, complainant side does not want to take any action against the accused. A prayer is, therefore, made to accept the compromise.

[14]. On the facts and in the circumstances of the case, and considering the Deed of Compromise and having heard learned counsel for the parties, in our opinion, ends of justice would be met if we grant necessary permission for compounding an offence punishable under Section 325 read with Section 34 IPC as required by sub-section (2) of Section 320 of the Code. The offence punishable under Section 323 IPC has already been compounded by the parties.

[15]. Sub-section (8) of Section 320 states that the compounding of offence under the section shall have an effect of acquittal of the accused with whom the offence has been compounded. The resultant effect of compounding of offences would be that the accused should be acquitted. In other words, once the offences have been compounded and the requisite permission is granted by the Court, the accused must be acquitted.

19. In Manoj &Anr. v. State of Madhya Pradesh, Cr. A No. 1530 of 2008, Hon'ble Supreme Court, based on compromise, accepted the compounding of the offence under section 324 IPC and acquitted the appellants.

20. In Surat Singh v. State of Uttaranchal (Now Uttarakhand), 2012(12) SCC 772, Hon'ble Supreme Court, based on compromise, permitted the parties to compound their offences under section 354 and 506 IPC.

21. In Dasan v. State of Kerala, (2014) 12 SCC 666, the Hon'ble Supreme Court converted the conviction from 326 IPC to 325 IPC and, based on compromise, accepted the compounding of the offence under section 325 IPC and acquitted the appellant.

22. In Deva Ram v. State of Rajasthan, (2014) 13 SCC 275, the appellant was convicted by Trial Court under section 420 IPC. His appeal against conviction was dismissed by the Sessions Court and revision petition was also dismissed by High Court. The convict approached the Apex Court and Hon'ble Supreme Court held,

[5]. We are informed that out of two years imprisonment the appellant has undergone six months imprisonment. Offence under Section 420 of the IPC is compoundable with the permission of the court by the

person who is cheated. Since the parties are related to each other and they have decided to accord a quietus to their disputes and live peacefully, we permit them to compound the offence. Hence, the offence under Section 420 of the IPC for which the appellant was convicted is compounded because it is compoundable with the permission of the court. The appellant is acquitted of the said charge.

23. In Ravinder Kaur v. Anil Kumar, (2015) 8 SCC 286, Hon'ble Supreme Court, in a matter arising out of conviction, permitted the compounding of offence under section 494 IPC.

24. In Sube Singh v. State of Haryana, 2013 (4) RCR (Cri) 102, a Division Bench of this Court holds,

[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.

[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.

25. 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 postconviction, 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."

26. The case of the Appellant/Applicant is covered in the light of the judicial precedents mentioned above.

27. 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.

28. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter.

29. In the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not serve any fruitful purpose whatsoever.

30. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner/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 petitioner does 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.

31. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 Cr.P.C and quashes the FIR, charges, and the judgment of conviction and all subsequent proceedings qua the Applicant/Appellant.

32. Given above, because of the compromise, and in the facts and circumstances peculiar to this case the above captioned judgment(s) of conviction and sentence, charges, and FIR, are hereby quashed qua the Appellant. However, the fine amount is forfeited to the State as cost incurred by it. The bail bonds of the appellant/convict are accordingly discharged. All pending application(s), if any, stand closed.

Appeal partly allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

18.04.2022

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.