

CRM-M-36615-2021--1--

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-36615-2021

Reserved on : 30.11.2021

Pronounced on: 05.01.2022

Bishan Dass @ Bitu @ Bitu and another

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vishal Munjal, Advocate for the petitioners.

 Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

 Mr. Sunil Agnihotri, Advocate for respondents No.2 to 4.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
0057	29.10.2017	Taragarh, District Pathankot	279, 337, 338 & 427 IPC

The petitioners, who have been arraigned as accused in the above captioned FIR, have come up before this Court under Section 482 CrPC to quash the FIR and all consequential proceedings based on the compromise with the victims.

2. The gist of the allegations against the petitioner(s) is that on 29.10.2017, the police recorded the statement of the complainant (respondent No.2) in the following terms:-

He stated that on 04.10.2017, when he was driving the Activa of his friend who was a pillion rider, then at around 7.30 pm a tractor (connected with a trally) without any indicator and light, crossed the road and because of which, his Activa hit with the

tractor and he received serious injuries. After admitting in ICU for long time he remained unconscious, therefore after so much of time he reported the matter to the police. Based on such information, the police recorded the FIR captioned above.

3. During the pendency of the petition, the accused and the injured have compromised the matter, and its copy is annexed with this petition as **Annexure P-2**. After that, the petitioners have come up before this Court to quash the FIR, and in the quashing petition, the injured have been impleaded as respondent(s).

4. On the prayer of the parties, the Court had permitted the parties to appear before the concerned Court to record their statements. As per the concerned Sessions Court's report, the victim(s), without any threat, consented to the quashing of FIR and consequent proceedings.

ANALYSIS & REASONING:

5. As per report of JMIC, Pathankot, statements of all the parties, have been recorded and the compromise effected between them is genuine, with their free will and without any pressure or coercion. It is also submitted in the report that as per statement of the complainant, he has no objection if the present FIR is quashed.

6. The following aspects would be relevant to conclude this petition: -

- a) The accused and the private respondent(s) 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, habitual, or professional offender;

h) The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family and society;

i) The ends of justice would justify the exercise of the inherent power by quashing the FIR and the consequent proceedings.

7. In the present case, the offence under S. 279 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.

8. In State of Punjab v. Shinder Paul, 1992(3) R.C.R.(Criminal) 506, a Division Bench of this Court (Punjab and Haryana) holds,

[1]. ...On the basis of the said compromise Judicial Magistrate Ist Class, Bhatinda acquitted the accused. Aggrieved by the acquittal, the State has preferred this appeal after obtaining leave under section 378 of the Code of Criminal Procedure.

[2]. Learned counsel appearing for the appellant contended that the offence under section 279 of the Indian Penal Code had not been made compoundable under section 320 of the Code of Criminal Procedure. It would follow that the said offence was not compoundable. It was further contended by the learned counsel that the offences under sections 279 and 338 of the Indian Penal Code could not possibly be considered to be offences of the same kind. These were mentioned in two separate Chapters of the Indian Penal Code.

[3]. We are not impressed by the argument. The offence under section 279 of the Indian Penal Code consists of rash or negligent driving etc. on a public way. The offence is punishable upto six months imprisonment or with fine upto Rs. 1,000/- or with both. The offence under section 338 of the Indian Penal Code, on the other hand, consists of causing grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or personal safety of others. The offence is punishable with imprisonment upto two years or a fine upto Rs. 1,000/- or with both. It will be seen that the offence under section 338 is an aggravated form of the offence under section 279 of the Indian Penal Code. Even otherwise the courts always lean in favour of compromise and even in cases which are not compoundable and somewhat less serious, the courts do give substantial effect to the compromise between the parties and give substantial relief to the convicted person on the basis of the compromise arrived at between the parties. It was observed by the Supreme Court in *Shakuntala Sahni v. K Sahni*, 1979, U.J. (SC) 478 that the finest hour of the justice is the hour of compromise when parties after burying the hatchet reunite by a reasonable and just compromise. We do not, therefore, find any justification to interfere in the order passed by the learned trial court and accordingly dismiss the appeal.

9. 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 summarised 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.

10. 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."

11. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter. Given the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any fruitful purpose whatsoever. The Court is inclined to invoke the inherent jurisdiction under section 482 Cr.P.C to quash the FIR and all subsequent proceedings in the peculiar facts and circumstances.

12. 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.

13. 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 stands vitiated.”

14. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to quash the proceedings mentioned above. In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms. The FIR and other proceedings captioned above, with all consequential proceedings arising therefrom, are hereby quashed qua the present petitioners. The bail bonds of the petitioners are accordingly discharged. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)

JUDGE

05.01.2022

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Whether speaking/reasoned: Yes

Whether reportable: No