

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

219

CRM-M-35293-2019 (O&M)

Reserved on: 17.02.2022

Pronounced on: 22.02.2022

VIPAN KUMAR

....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. KBS Mann, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG Punjab.

Ms. Kuljinderbir Kaur, Advocate
for respondent Nos.2 and 3.

VINOD S. BHARDWAJ. J.

This case has been taken up through video conferencing via Webex facility in the light of pandemic Covid-19 situation and as per instructions.

2. By means of the instant petition, the jurisdiction of this Court under Section 482 Cr.P.C., has been invoked seeking quashing of FIR No.152 dated 15.10.2009 under Sections 307, 353 and 186 of the IPC registered at Police Station City Malout, District Sri Muktsar Sahib (Annexure P-1) on the basis of compromise dated 03.08.2019 (Annexure P-3) effected between the parties and also to set aside the judgment dated 25.10.2016 (Annexure P-2) passed by the learned Sub Divisional Judicial Magistrate, Malout convicting the petitioner as the appeal against the aforesaid judgment of conviction is still pending in the Court of learned Additional Sessions Judge, Sri Muktsar Sahib.

3. It is pertinent to add that even though the FIR in question had been registered for offences under Sections 307, 353 and 186 of the IPC, however, final report under Section 173 CrPC was filed for offences triable under Sections 326, 353 and 186 of the IPC.

4. The case had initially come up for hearing on 28.08.2019, when the following order was passed:-

'Prayer made in the petition is for quashing of FIR No.152 dated 15.10.2009 under Sections 307/353/186 IPC, registered at Police Station City Malout, District Sri Muktsar Sahib on the basis of the compromise.

Notice of motion for 6.11.2019.

On the asking of the Court, Mr. Joginder Pal Ratra, DAG, Punjab, who is present in the Court accepts notice of behalf of respondent- State and Mr. Vikas Garg, Advocate accepts notice on behalf of respondents No.2 and 3.

In the meantime, parties are directed to appear before the trial Court/Illaq Magistrate for recording of their statements with regard to compromise/settlement within a period of 30 days from today.

The trial Court/Illaq Magistrate is directed to submit a report on or before the next date of hearing containing the following information:

- 1. Number of persons arrayed as accused in FIR,*
- 2. Whether any accused is proclaimed offender,*
- 3. Whether the compromise is genuine, voluntary and without any coercion or undue influence,*
- 4. Whether the accused persons are involved in any other FIR or not.*
- 5. The trial Court is also directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR.'*

5. That pursuant to the said order, the parties appeared before the

learned Sub-Divisional Judicial Magistrate, Malout and a report bearing memo No.686 dated 30.09.2019 has been submitted. The same reads thus:-

'2. On 24.09.2019, Complainant Parhlad, injured/eyewitness Balkar Singh and accused Vipan Kumar appeared before the undersigned. Complainant Parhlad and injured/eyewitness Balkar Singh suffered separate statements that FIR No.152 dated 15.10.2009 under Sections 307, 353, 186 IPC has been registered on the basis of statement of complainant Parhlad against accused/petitioner Vipan Kumar. Now, they have compromised the matter with the accused without any coercion, pressure or undue influence. They have no grudge against above said accused person. They further stated that they have no objection if the proceedings against accused are quashed.

3. Similarly, petitioner-accused Vipan Kumar also suffered statement to the effect that compromise is genuine, voluntary and without any coercion.

4. Investigating officer of case ASI Karnail Singh No.710/SMS, now posted at PS City Malout stated that Parhlad is complainant and Balkar Singh is victim in the present case. No other FIR is registered against accused Vipan Kumar. Only one accused i.e. above said Vipan Kumar is accused in the above said FIR and no accused has been declared proclaimed offender in the case in hand.

5. From the statements made by the parties, this court is satisfied that aforesaid statements have been made by complainant Parhlad, injured/eye witness Balkar Singh and accused voluntarily, without any threat or any undue influence. It is further submitted that as per statement of Investigating officer, there is only accused namely Vipan Kumar and Parhlad is complainant and Balkar Singh is injured in the present case. No other FIR is registered against accused Vipan Kumar. Only one accused i.e above said Vipan Kumar as accused in the above said FIR and accused has not been declared as proclaimed offender in any case.

6. The statements are annexed herewith for your kind perusal. Report is hereby humbly submitted.

6. A perusal of the aforesaid report furnished by learned Sub-Divisional Judicial Magistrate, Malout shows that the compromise has been effected voluntarily, without any threat or undue influence and that none of the accused has been declared as proclaimed offender in the case in hand. It is also reported that there is only one accused and he is not involved in any other case. The aforesaid report was duly supported by the statements of complainant as well as the injured.

7. 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.

8. Ms. Kuljinderbir Kaur, Advocate appears on behalf of for respondent Nos.2 and 3 and reiterates the settlement and her concurrence to the FIR and all the other consequential proceeding being quashed.

9. The Full Bench of this Court in the matter of “***Kulwinder Singh and others versus State of Punjab and another***” reported as (***Punjab and Haryana High Court***) : 2007 (3) RCR (Criminal) 1052 has been observed as under:

“(27) Shri R.S. Cheema, learned Senior Advocate, who assisted the Bench as Amicus Curiae, highlighted the inadequacies of the criminal justice system in order to propound and promote the principle that under Section 482 of the Cr.P.C., the High Court can effectively exercise its power in an appropriate case and intervene to quash an F.I.R. even when the case discloses a non-compoundable offence and where the parties have voluntarily entered into a compromise. To illustrate, he submitted that the Legislature, in its wisdom, is seeking to introduce a pre-bargaining in the country and in this scenario, to curtail the power under Section 482 by reading into the provisions of law the non-existing lines would, indeed, be a

travesty of justice, especially in view of the fact that there is a wide spread tendency in the society now to use the arm of criminal law to settle civil disputes and he reiterated certain contingencies which were also placed before the Bench during the course of hearing in Dharambir's case (supra). Some of the guidelines were as follows:

- 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 No. 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."

(28) 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 of the 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".

*(29) In **Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and Ors.**, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:*

"The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

(30) The power to do complete justice is the very essence of

every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

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

(32) The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

(33) The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. 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 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.

(34) The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters

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 of the Cr.P.C. 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 extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting 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.

10. 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 verus 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. 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.

11. 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 waste of judicial time and there appears to be no chances of conviction. The petitioner stands convicted vide judgment dated 25.10.2016 passed by the Court of learned Sub-Divisional Judicial Magistrate, Malout and has been sentenced as under:-

Under Section 324 IPC	RI for two years along with fine of Rs.2,000/- and in default of payment of fine to further undergo RI for 07 days
Under Section 332 IPC	RI for two years along with fine of Rs.2,000/- and in default of payment of fine to further undergo RI for 07 days
Under Section 353 IPC	RI for one year along with fine of Rs.1,000/- and in default of payment of fine to further undergo RI for 07 days
Under Section 186 IPC	RI for three months along with fine of Rs.500/- and in default of payment of fine to further undergo RI for 07 days

12. A perusal of the same shows that even though the FIR was initially registered for an offence under Section 307 IPC, however, the final report under Section 173 CrPC was filed for offence under Section 326 IPC, but the conviction is only for offences under Sections 324, 332, 353 and 186 of the IPC. The appeal against the said judgment of conviction and order of sentence dated 25.10.2016 is pending in the Court of learned Additional Sessions Judge, Sri Muktsar Sahib.

13. The Hon'ble Supreme Court has held in the matter of '**Ramgopal And Another Vs State of Madhya Pradesh, 2021 SCC Online SC 834**', that the matters which can be categorized as personal in nature or in the matter in which the nature of injuries do not exhibit mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest, the Court can quash the FIR in view of the settlement arrived at amongst the parties. The observation of the Hon'ble Supreme Court is extracted as under:-

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

20. Having appraised the afore-stated para-meters and weighing upon the peculiar facts and circumstances of the two

appeals before us, we are inclined to invoke powers under Article 142 and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that: Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature; Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest; Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed; Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s); Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties; Sixthly, since the Appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any ill-will and have no vengeance against each other; and Seventhly, the cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.

14. A perusal of the aforesaid judgment would establish that the extraordinary power enjoined upon a High Court under Section 482 CrPC can be invoked beyond the contours of Section 320 CrPC. It further establishes that criminal proceedings involving non-heinous offences can be annulled irrespective

of the fact that the trial has already been concluded and the compromise is struck post conviction and during pendency of consequential proceedings. The jurisdiction under Section 482 CrPC has to be exercised with rectitude considering the circumstances of the case with an object to secure ends of justice. In the matter of **Bhagel Singh Vs. State Punjab 2014 (3) RCR (Criminal) 578**, where an accused had been convicted for offence under Section 326 IPC and was sentenced to undergo rigorous imprisonment for 2 years, the parties entered into compromise during pendency of the appeal, this Court, while placing reliance upon the precedent judgments of **Lal Chand Vs. State of Haryana. 2009 (5) RCR (Criminal) 838** and **Chhota Singh Vs. State of Punjab 1997(2) RCR (Criminal) 392** allowed the compounding of offence in respect of Section 326 IPC at the appellate stage with the observation that the same would be a starting point in maintaining peace amongst the parties. Further in a judgment dated 09th March 2017, passed in **CRR No.390 of 2017** titled as **Kuldeep Singh Vs. Vijay Kumar and another**, this Court has held as under:-

*'Reliance can be placed on **Kaushalya Devi Massand Vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298** and **Damodar S. Prabhu Vs. Sayed Babalal, AIR 2010 (SC) 1097**, The revisional jurisdiction of the High Court in terms of Section 401 CrPC.,1973 would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as an everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of section 147 of Negotiable Instruments Act.

*The principles laid down in **Damodar S. Prabhu Vs. Sayed Babalal, AIR 2010 (SC) 1097** would be squarely fortified if the*

compromise in question is allowed to be effected between the parties with leave of the Court.

In view of the aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in Damodar S. Prabhu's case (supra) to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.'

15. The aforesaid principle has further been followed by a co-ordinate Bench of this Court in the matter of **Ankush Tiwari And Others Vs. State of Punjab and Another reported as 2022(1) RCR (Criminal) 379.**

16. A perusal of the FIR as well as the judgment establishes that the present dispute is in the nature of a private dispute resulting in causing injury to the person of the complainant as well as the victim, who have chosen to voluntarily bury their grievance and to give quietus to the same. It does not transgress the contours of public disorder or disruption of public tranquillity. The dispute in question owes its origin to an incident of the year 2009 and nearly 12 years have already been passed since the proceedings in the matter has commenced. A complete resolution of the dispute has already taken place amongst the parties with the intervention of the respectables from both the sides. It would thus be in the fitness of the things that the instant petition is allowed.

17. In view of the report of the learned Sub-Divisional Judicial Magistrate, Malout 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 by the Full

Bench of this Court in *Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR (Criminal) 1052* and also by the co-ordinate Bench of this Court in the matter of *Ankush Tiwari And Others Vs. State of Punjab and Another reported as 2022(1) RCR (Criminal) 379*, the instant petition is allowed.

The aforesaid FIR No.152 dated 15.10.2009 under Sections 307, 353 and 186 of the IPC registered at Police Station City Malout, District Sri Muktsar Sahib (Annexure P-1), is **hereby quashed** in view of compromise dated 03.08.2019 (Annexure P-3) and the judgment dated 25.10.2016 (Annexure P-2) passed by the learned Sub Divisional Judicial Magistrate, Malout is set aside. However, the same would be subject to payment of costs of Rs.10,000/- to be deposited with the '**Poor Patients Welfare Fund**' of the **Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh**, within one month from receipt of certified copy of this order.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

22/02/2022

S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No