

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

CRM-M-41075-2022

Date of decision : 15.11.2022

MOHAMMAD SHARIF ALIAS SHARIF AND ANR

....Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sunil Agnihotri, Advocate
for the petitioners.

Mr. Sarabjit Singh Cheema, DAG, Punjab
for respondent No.1-State.

Mr. Ketan Chopra, Advocate for
Mr. Vishal Munjal, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

By way of present petition, the petitioners are seeking quashing of FIR No.013, dated 13.02.2021 registered for the offences punishable under Sections 323, 325, 452 & 506 of the IPC, at Police Station Sadar Phagwara, District Kapurthala (Annexure P-1) on the basis of compromise.

2. On 08.09.2022, the following order was passed :-

“CRM-33494-2022

Application is allowed, as prayed for.

CRM-M-41075-2022

The present petition has been moved invoking jurisdiction of this Court under Section 482 Cr.P.C. by the petitioners facing trial in FIR No.013 dated 13.02.2021,

registered for offences punishable under Sections 323, 325, 452 & 506 of the Indian Penal Code, at Police Station Sadar Phagwara, District Kapurthala and all consequential proceedings arising there-from qua the petitioners in view of the compromise dated 28.08.2021 (Annexure P-2) arrived at between the parties.

Learned counsel for the petitioners contends that the matter already stands compromised vide compromise dated 28.08.2021 (Annexure P-2) and the challan is yet to be presented.

Notice of motion for 15.11.2022.

On the asking of the Court, Mr. Gurdarshan Singh Sidhu, Asstt. A.G., Punjab accepts notice on behalf of respondent No.1-State. Mr. Amandeep Singh, Advocate for Mr. Vishal Munjal, Advocate appears and accepts notice on behalf of respondent No.2 and admits the fact of there being a compromise between the parties.

In view of the above, the parties, i.e. the petitioners as well as respondent No.2 are directed to appear before learned Duty Magistrate/Illaqa Magistrate/trial Court on 19.09.2022. On their doing so, the learned Duty Magistrate/Illaqa Magistrate/trial Court shall record their statements and furnish its report to this Court by the next date of hearing on the following aspects:-

- 1. Number of persons arrayed as accused in the 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 case 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.*

A copy of the report be also sent to the Registrar Judicial

of this Court.

Needless to say that in case for any reason the statements are not recorded on the aforesaid date, the learned Illaqa Magistrate/trial Court shall be at liberty to call the parties on any other date but not later than a week thereafter.”

3. Pursuant to the aforesaid order, report from JMIC Phagwara dated 29.09.2022 has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

“(I) In the present FIR only two persons were arrayed as accused namely Mohammad Sharif @ Sharif Ali and Fakhardeen @ Bhau.

(II) None of the accused have ever been declared proclaimed offender.

(III) The compromise so effected is genuine, voluntary and without any coercion or undue influence.

(IV) The accused persons are not involved in any other case except the present FIR.

(V) There is only one victim/complainant namely Junna in the present case.”

4. Ld. Counsel appearing for respondent No.2 admits the fact of parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto against the petitioners are quashed.

5. Similarly Ld. State Counsel has stated no objection in case the FIR is quashed based upon the compromise.

6. I have heard Ld. Counsel for the parties and have carefully

gone through the records of the case.

7. After considering judgment rendered by the Apex Court in **Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688, Kulwinder Singh & others vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052 and Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of 2012 decided on 29th of September, 2021)**, the proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

- (a) Power u/s 482 Cr.P.C. vested with this Court is not affected by Section 320 of the Code.
- (b) However, wider the power greater the caution.
- (c) The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.
- (d) The said power is not to be exercised in the prosecutions involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.
- (e) Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High Court would not refuse to quash FIR under Section

307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.

(f) Such exercise at the hands of High Court would be permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter is still under investigation.

(g) While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.

8. Thus, keeping in view the aforesaid facts and circumstances, this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested u/s 482 Cr.P.C. to quash the FIR as :-

- (i) The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra).
- (ii) The offences are of private nature.
- (iii) The parties have compromised.
- (iv) As per the report received the compromise is said to be voluntary in its nature.
- (v) Complainant/victim has entered into compromise on his own volition.

9. Consequently, the petition is allowed. FIR No.013, dated 13.02.2021 registered for the offences punishable under Sections 323, 325, 452 & 506 of the IPC, at Police Station Sadar Phagwara, District

Kapurthala (Annexure P-1) and all proceedings arising therefrom, are,
hereby, quashed *qua* the petitioners.

November 15, 2022

Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No