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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44081-2022 (O&M)
Date of Decision: 23.12.2022

HARWINDER SINGH @ BINDA

....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.S. Sodhi, Advocate
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab.

Mr. Kamal Singh, Advocate
for respondent No.4.

HARSH BUNGER, J. (Oral)

This petition has been filed for quashing of FIR No.223 dated 09.08.2017, under Sections 323, 341, 506, 34 of Indian Penal Code registered at Police Station Samrala, Police District Khanna (Annexure P-3) and all the consequent proceedings arising therefrom only qua petitioner herein, on the basis of compromise dated 13.09.2022 (Annexure P-4) arrived at between the parties.

On 29.11.2022, this Court had passed the following order:-

"CRM-40741-2022:

Present application is filed for preponing the date of hearing fixed in the main case, being CRM-M-44081-2022, from 19.12.2022 to an early actual date. Another prayer in this application is for permitting the parties to get their respective statements recorded in view of the compromise (Annexure P-4) arrived at between them for quashing of FIR No.223 dated 09.08.2017 (Annexure P-3) under Sections 323, 341, 506 and 34 IPC, registered at Samrala, Police District Khanna, along with all consequential proceedings arising

therefrom.

Notice of the application.

Mr. Subhash Godara, Additional Advocate General, Punjab waives service on behalf of respondents No.1 to 3/State and Mr. Pritpal Singh Miglani, Advocate appears on behalf of Mr. Kamal Singh, Advocate and accepts notice on behalf of non-applicant/respondent No.4.

No ground is made out to prepone the next date of hearing(19.12.2022) in the main case, i.e. CRM-M-44081-2022.

However, the parties are directed to appear before Illaqa Magistrate/trial Court for recording of their respective statements with to the compromise (Annexure P-4), on or before 09.12.2022.

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

(i) Number of persons arrayed as accused in FIR and those found involved during investigation;

(ii) What is the status of the proceedings of the case/FIR;

(iii) Whether any accused is proclaimed offender;

(iv) Whether the accused persons are involved in any other case or not;

(v) Whether all the concerned have signed the compromise deed;

(vi) Whether the compromise is genuine, voluntary, and without any coercion or undue influence;

(vii) 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.

The afore-made report be ensured to be sent to this Court on or before the date already fixed in the main case, i.e. 19.12.2022.

Application is accordingly disposed of.

CRM-40742-2022:

To be taken up along with the main case on 19.12.2022”

In compliance thereof, the Additional Civil Judge (Sr. Division)-cum-SDJM, Samrala has submitted its report, vide letter dated 09.12.2022, which indicates that the parties appeared before the Magistrate

and got their respective statements recorded with regard to the validity of the

compromise. Relevant extract of the said report is reproduced as under:-

“3. Para wise reply of details sought through this report is under:-

i) There are only two accused persons namely Harwinder Singh Binda and Baldev Raj arrayed as accused in the present FIR.

ii) Challan has already been presented against accused Harwinder Singh. However, accused Harwinder Singh did not put in appearance and after issuance of non-bailable warrants, proceedings under Section 82 CrPC are pending against him. He has not been declared proclaimed offender till date.

iii) As per the statement of Investigating Officer, none of the accused is proclaimed offender in the present case.

iv) As per the statement of Investigating Officer, none of accused persons are involved in any other case.

v) Complainant-Balwinder Singh and Inderjit Singh-Special Power of Attorney of accused-Harwinder Singh @ Binda as well as witnesses signed the compromise deed.

vi) Considering the statements of complainant party as well as the S.P.A of accused-Harwinder Singh, the compromise seems genuine and voluntary in nature and without any coercion or undue influence.

vii) Statement of Investigating Officer also recorded as per there is only one victim/complainant in the present FIR.”

A perusal of the said report would show that the compromise has been found to be genuine, without any coercion or undue influence.

It is the submission of learned counsel for the petitioner that in present FIR No.223 dated 09.08.2017, under Section 323, 341, 506, 34 IPC registered at P.S. Samrala, Police District Khanna, there are two accused persons, namely Harwinder Singh @ Binda and Baldev Singh, however respondent No.4/complainant has entered into a compromise only with the petitioner herein (Harwinder Singh @ Binda); accordingly, a prayer has been made that the abovesaid FIR may be quashed only against the petitioner herein and the proceedings may go on against the other accused in the said

FIR.

Learned counsel for respondent No.4 has reiterated that the matter has been settled and compromised only between the petitioner herein (Harwinder Singh @ Binda) and respondent No.4/complainant so as to bring peace and amity between the parties. Accordingly, it is submitted that present FIR No.223 dated 09.08.2017 may be quashed only against the petitioner herein and the proceedings may be directed to go on against the other accused in the said FIR.

The issue regarding quashing of FIR against one or few of many accused and allowing the proceedings to continue against the other co-accused was subject matter before various courts on different occasions and considering totality of facts and circumstances, the courts have permitted partial quashing of FIR and at the same time, the proceedings have been allowed to continue against other co-accused. Some of the decision in this regard are as follows:

In ***Jayrajsinh Digvijaysingh Rana v. State of Gujarat, 2012(12) SCC 401***; Hon'ble Apex Court quashed the FIR where the compromise was effected by one of the accused with the complainant, by observing as under:

“...In the case on hand, irrespective of the earlier dispute between Respondent No. 2-the complainant and the appellant being Accused No. 3 as well as Accused Nos. 1 and 2 subsequently and after getting all the materials, relevant details etc., the present appellant (Accused No. 3) sworn an affidavit with bona fide intention securing the right, title and interest in favour of Respondent No. 2 herein-the Complainant. In such bona fide circumstances, the power under Section 482 may be exercised. Further, in view of the settlement arrived at between Respondent No. 2-the complainant and the appellant (Accused No. 3), there is no chance of recording a conviction insofar as

the present appellant is concerned and the entire exercise of trial is destined to be an exercise in futility. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power under section 482 of the Code even in offences which are not compoundable under Section 320, may quash the prosecution. However, as observed in Shiji (supra), the power under Section 482 has to be exercised sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In other words, the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.

10. In the light of the principles mentioned above, inasmuch as Respondent No. 2-the Complainant has filed an affidavit highlighting the stand taken by the appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the appellant herein (Accused No. 3) is concerned.

11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable under Sections 467, 468, 471, 420 and 120B of Indian Penal Code insofar as the appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above...”

Partial or part quashing of FIR only qua the accused/offender with whom the complainant has compromised has also been upheld in ***Lovely Salhotra and Anr. v. State, NCT of Delhi; 2017 (3) R.C.R. (Criminal) 85*** vide judgment dated 10.04.2017 passed by the Hon'ble Apex Court; wherein it was observed to the effect that it could not be held that the

FIR cannot be quashed in part where no offence was made out against the accused who sought the quashing of the FIR. The observations in paragraph 3 and 6 of the said verdict of the Apex Court are to the following effect:

"3. We have taken into account the fact of the matter in question as it appears to us that no cognizable offence is made out against the appellant-herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants-herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No. 2- herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos.2, 3, 4 and 6 prima facie.

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6. Accordingly, we set aside the order of the High Court and quash the FIR qua the appellants-herein."

In ***Vijay Kumar Gupta v. State, Government of NCT of Delhi in Crl. M.C. No. 2289/2013***, the Delhi High Court made the following observations in para 7 thereof:

"7. Looking into the facts and circumstances of the case and the fact that the petitioners have paid the loan/settlement amount to the Respondent No. 2 and nothing remains to be adjudicated further, to remove the hurdle in the personal life of the present petitioners for leading better and peaceful life and to meet the ends of justice, I deem it appropriate to quash the FIR No. 107/2003, under Section 406/420/468/471 Indian Penal Code, 1860, registered at Police Station - Parliament Street, Delhi qua against the petitioners, namely Vijay Kumar Gupta, Raj Kumar Sharma and Vinod Chaudhary only to the extent of their

role in commission of the alleged offence."

In ***Sarabjit Singh v. State of Punjab, 2007(3) RCR (Criminal) 479 (P&H)***, money was taken by the accused in the said case for sending the son of the complainant abroad, but the son of the complainant was sent to some other destination. The complainant had settled the dispute with the petitioner in the said case but not with the other accused who had also filed the petition in this Court for quashing of the complaint. This Court quashed the complaint *qua* the petitioner in the said case by making it clear that the proceedings against the other accused would continue.

In ***Gurtej Singh v. State of Haryana, 2010(3) RCR (Criminal) 660 (P&H)***, it was held as under:

"6. The present dispute is purely personal in nature and the compromise has been arrived at between the petitioner and complainant. The said compromise has been arrived at between the two without any pressure. The complainant has no objection if the said FIR is quashed qua the present petitioner.

7. Taking into account the allegations as well as the statement of the complainant and the matter being totally personal in nature, there is no impediment in the way of this Court to quash the present FIR at least qua the petitioner.

8. Keeping in mind the decisions rendered by this Court in the cases of Parambir Singh Gill, Kulwinder Singh as well as the decision rendered by the Hon'ble Supreme Court in the case of Madan Mohan Abbot (supra) as also the facts of the present case, the compromise deserves to be accepted. Thus, it would be in the interest of justice to quash FIR No. 94 dated 03.07.2008 under sections 420, 467, 468, 471, 120B of Indian Penal Code, Police Station Pinjore, District Panchkula as well as further proceedings arising out of the same for keeping peace, harmony as well as to reduce friction in the society qua the petitioner only.

9. Accordingly, the aforesaid FIR and further proceedings

arising out of the same are hereby quashed qua the petitioner whereas the proceedings against other accused shall continue...”

Learned State counsel does not raise any serious dispute regarding quashing of the FIR in question against petitioner only on the basis of compromise between the parties.

Keeping in view the aforementioned position, it is noticed that in the present petition, one accused, namely Harwinder Singh @ Binda, out of two accused, is seeking quashing of FIR in question on the basis of compromise, thus, it is a case of partial compromise which is permissible as per the judgments referred above.

I have heard learned counsel for the parties and perused the file. After perusing the report submitted by the trial Court, this Court finds that the matter has been amicably settled between the petitioner herein (Harwinder Singh @ Binda) and respondent No.4/complainant.

Hon'ble Apex Court in the case of ***Gian Singh Versus State of Punjab and another. 2012(4) RCR (Criminal) 543*** has held as under:-

“57. 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 pre-dominantly 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 personnel 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.”

In *Shakuntala Sawhney Vs. 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.

Considering the entire facts, compromise, the statements of the parties recorded before the Illaqa Magistrate / Trial Court and also the report dated 09.12.2022 submitted by Additional Civil Judge (Sr. Division)-cum-SDJM, since the parties have arrived at a compromise by amicably settling their disputes and have decided to live in peace, no useful purpose will be served in allowing the criminal proceedings to continue against the petitioner herein (Harwinder Singh @ Binda).

Further, in the light of the above mentioned judicial precedents, when the parties have entered into a compromise, then continuation of the proceedings would be mere an abuse of process of the Court.

In order to prevent unnecessary continuation of criminal proceedings on the ground that there are bleak chances of conviction in the case, I am of the considered view that it would be in fitness of things to quash the proceedings on the basis of compromise and by quashing the FIR, while accepting the prayer of the petitioner herein (Harwinder Singh @ Binda) only, would be securing the ends of justice.

Accordingly, this petition is allowed. FIR No.223 dated 09.08.2017, under Sections 323, 341, 506, 34 of Indian Penal Code registered at Police Station Samrala, Police District Khanna (Annexure P-3) and all the consequent proceedings arising therefrom, are quashed qua

petitioner herein only. However, the same would be subject to payment of costs of Rs.10,000/- to be deposited by the petitioner-Harwinder Singh @ Binda with the “**Poor Patients Welfare Fund, PGIMER, Chandigarh**” and the said amount would be spent for the treatment of poor patients within the knowledge of its Medical Superintendent.

It is clarified that the proceedings against the other accused shall continue.

Needless to say that parties shall remain bound by the terms of compromise and their statements made in the Court below.

All pending application(s), if any, shall stand disposed of.

23.12.2022

Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No