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

CRM-15388-2022 IN/AND
CRM-M-48148-2021
Date of decision:04.05.2022

KULDEEP SINGH

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. N.K. Chhokar, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana

Mr. Abhimanyu Kalsy, Advocate for
Mr. Rajesh Duhan, Advocate
for respondent No.2.

SURESHWAR THAKUR, J. (ORAL)**CRM-15388-2022**

The present application has been filed for preponing the date of hearing of main case.

For the good, and, valid reasons recorded in the application, the application is allowed. Main case is taken up today.

CRM-M-48148-2021

1. Through the instant petition, filed under Section 482 of the Cr.P.C., the petitioner seeks quashing of FIR No.360, dated 08.12.2020, under Sections 323, 506 of IPC and, under Section 3 of The SC & the ST (Prevention of Atrocities) Act, 1989, lodged at Police Station Industrial Sector 29 Panipat, District Panipat, and, also of all consequential proceedings arising therefrom, hence on the basis of compromise (Annexure P-2) arrived at between the parties.

2. When the instant petition came up before this Court on 17.11.2021, an order was made upon the learned Magistrate concerned, to make a report to this Court, with respect to the genuineness of the compromise, as also whether any person(s) has/have been nominated as accused, and, as also whether any person has been declared a proclaimed offender, and, that whether challan has been filed. The afore order, makes it apparent that the petitioner had depended, upon, a compromise/settlement, arrived at, in respect of the FIR (supra) with the complainant-respondent No.2.

3. The afore made order by this Court on 17.11.2021, has been complied with by the learned Magistrate concerned, and, the elicited report has been placed on record. A perusal of the report, transmitted to this Court, by the learned Magistrate concerned, reveals that the settlement/compromise, arrived at *inter se* the petitioner, and, the respondent No.2, is a sequel of both, being *ad idem* qua it, besides the compromise/ settlement being a sequel of no pressure or coercion, being exercised upon each other. Moreover, the compromise is stated by the learned counsel concerned, to be compositely drawn, and, obviously also thereons exist the signatures of all concerned, in the penal transaction(s) concerned. Moreover, the learned Magistrate has reported that the settlement/compromise, depended upon by the petitioner, for seeking quashing of the FIR (supra), is both voluntary, and, also is free from vices of duress, and, or of compulsion, being exercised upon each other, besides is genuine.

4. The learned State counsel though, does not contest the statements, made at the bar by the appearing counsel for the accused, and, the victim, that the compromise on the basis of which the quashing petition is filed, before this court, is compositely drawn or his drawn amongst all concerned, in the penal transaction concerned. However, he contends with much vigor before this Court,

that since the trial has opened, upon the charges framed against the accused concerned. Therefore, he contends with much vigor before this Court, that the afore factum, does militate(s) against the principle(s) of law, as, encapsulated in the hereafter extracted judgments, inasmuch as, qua the therein trite underlinings appertaining to the remoteness or bleakness of a verdict of conviction being returned against the accused concerned, principle (supra) rather would become potentialized, only when the compromise on which dependence, is made by all concerned, is drawn, and, is depended upon, at a stage when the prosecution evidence, has yet not opened, upon the charges framed against the accused.

5. However, the afore made submission cannot be accepted by this Court, as the learned State counsel has also further very fairly submitted, before this Court, that rather than the victim-aggrieved stepping into the witness box, and, his making a testification supportive of the charge, only a singular official prosecution witness has stepped into the witness box, and, has only proven the factum, of his registering the FIR concerned, in the register maintained for the relevant purpose at the police station concerned. Therefore, the underlying principle, as, encapsulated in the hereafter referred judgments, regulates the making of an affirmative verdict, upon, a compromise based quashing petition, rather mandating that compromise based quashing petition(s), are permissible to be instituted before this Court, and, also this Court in the exercise of its jurisdiction under Section 482 Cr.P.C., may proceed to rely upon them, only when the prosecution evidence has not yet opened, especially, when hence in the face of the compromise, as, struck amongst the concerned, there would be bleakness, and, remoteness of a verdict of conviction becoming pronounced against the accused concerned. The above necessarily, and, obviously would

spur, as thereupons, there would be every likelihood of the aggrieved-victim, and/or, the other prosecution witnesses concerned, except the official witnesses concerned, resiling from their respectively recorded previous statements, in writing, and, with a further effect, that thereupon their may be, every likelihood of a verdict of acquittal being pronounced qua the accused concerned, and, when hence yet making the accused concerned, to face the ordeal of trial, would result in encumbering them with unnecessary humiliation, and, harassment.

6. In sequel, the compromise which has been drawn amongst the concerned, and, when as afore stated, only an official prosecution witness, and, who is not the investigating officer concerned, but is a clerk working in the police station concerned, and, has proven qua his entering the FIR, in the register concerned, as, maintained at the police station concerned. Therefore, the afore drawn compromise, and, which is reported to be voluntarily drawn amongst all concerned, requires its becoming accepted.

7. Moreover, the learned State counsel, has also, irrespective of the fact, that the compromise has been drawn amongst them, rather opposed the granting of any relief to the accused,. The afore contest is anchored, upon, the factum that since the accused, is to be tried for an offence constituted, under a Special Act nomenclatured as The SC and ST (Prevention of Atrocities) Act, thereupon, when qua therewith rather in the judgments extracted hereafter, an embargo is cast against the acceptance of any compromise(s), by the High Court, rather instituted in a petition constituted under Section 482 Cr.P.C. Thereupon, he contends that in the wake of attraction of the apposite embargo against the acceptance of the extant compromise based petition(s), this Court may not grant any relief to the petitioner herein.

8. However, the afore made submission also does not come to be accepted by this Court, as the learned State counsel, has also further candidly submitted before this Court, that the purported disparaging casteist utterances, as made against the victim concerned, by the accused, rather were made telephonically, and, obviously when hence the afore conversation, did not become viralized, and, also did not enter into the public domain. Therefore, when only the victim becomes the aggrieved, and, not the entire members of the scheduled caste community concerned, rather also begets the further consequence, that the victim-aggrieved is fully capacitated to enter into a valid acceptable settlement or compromise with the accused.

9. The learned counsel for the petitioner has also placed on record a verdict rendered by the Hon'ble Apex Court in case, titled as **Ramawatar Versus State of Madhya Pradesh**, bearing **Criminal Appeal No.1393 of 2011**. In paragraphs 16, and, 17 of verdict (supra), paragraphs whereof stand extracted hereafter.

"16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr.P.C.

17. Adverting to the case in hand, we note that the present Appellant has been charged and convicted under the unamended Section 3(1)(x) of the SC/ST Act^[7*], which was as follows:

[7* Section 3(1)(x) of the Act stands substituted by Act No.1 of 2016 w.e.f. 26.01.2016.]

“3. Punishments for offences of atrocities- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

XXXX

(a) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

XXXX"

10. The salient principles regulating the exercise of jurisdiction by this Court in a compromise based quashing petition(s) stand therein completely enumerated. Though a reading of the hereinabove extracted paragraphs of verdict (supra), underline(s) salient principles, that the High Court upon being seized of any compromise based petition, and, as become drawn *inter-se* a member of a non-scheduled caste community, and, a member of a scheduled caste community, thereupon it has to completely satisfy its judicial conscience, that the compromise, as is entered amongst all concerned, rather is free from any vices of exercise of coercion, and/or, duress, as, purportedly exercised by any non-scheduled caste accused, upon, any member of a scheduled caste community. In the face of the above expostulations of law, this Court has proceeded to, apply them to the facts at hand. In the afore endeavour the conspicuous factum, of the learned Magistrate concerned, after recording the testifications of all concerned, making a report to this Court, that the executants' of the compromise concerned, have proceeded to make its execution, through each rather exercising their free will, and, free consent. Therefore, when the

compromise, as becomes depended, upon, by all the concerned, is free from any vices of duress, and, compulsion becoming exercised upon each other, and, besides when the afore parameter, for accepting a compromise based petition drawn amongst, any accused/member of a non-scheduled caste community, with a member of the scheduled caste community, rather becomes fully satisfied. Consequently, the above offence does not constrain this Court to not accept the extant petition *de-hors* any embargo against its acceptance, and, as arises from any penal offence becoming embodied in a special statute.

11. The effect of the afore statement, as made with extreme vehemence by the learned counsel for the petitioner, and, also the effect of the statement made by the learned counsel appearing for the State of Punjab, is that, the relevant parameters as encapsulated in a verdict of the Hon'ble Apex Court, rendered in case titled as, ***Gian Singh versus State of Punjab and another 2012 (4) RCR (Criminal) 543***, inasmuch as a postulate/occurring therein, that the inherent power under Section 482 Cr.P.C., as vested in the High Court, for quashing of criminal proceedings, as/of FIR or complaint, through recourse being made to the provisions of Section 482 Cr.P.C., rather being distinct and different from the power given to a criminal Court, hence for compounding the relevant offence, being enjoined to become tested vis-a-vis the facts in hand, for apposite application thereons. However, it has also been held therein, the afore power vested in the High Court, is of the widest plenitude, with no statutory limitation, being placed thereon, yet it has to be exercised to secure the ends of justice, and, to prevent the abuse of process of any Court. Though no straightjacket formula, has been contemplated therein, for recourse being made to the mandate of Section 482 Cr.P.C., hence for quashing of an FIR, or criminal proceedings or complaint, yet the essential rubric viz-a-viz its valid exercising,

is comprised in the principle, that if the accused and the complainant rather enter into a valid *ad idem* settlement, and, when thereupon the conviction of the accused becomes remote and bleak. Consequently, it has been mandated, that unless the offences sought to be quashed, through the exercising of the power vested under Section 482 Cr.P.C., are not serious and heinous, inasmuch as the afore, do not embody offences appertaining to murder, rape, dacoity etc., and, or when the offences are in relation to special statutes like Prevention of Corruption Act or offences committed by public servants, while working in that capacity, thereupon it can be permissibly exercised. However, upon evident existences of embargos (supra), spelt in the verdict (supra), thereupon, the High Courts are barred, through recouring the mandate of Section 482 Cr.P.C., hence, to quash the FIR or quash the criminal proceedings appertaining to serious/heinous offences (supra).

12. It is apt to extract the relevant paragraph of the verdict made by the Hon'ble Apex Court in ***Gian Singh***'s case (supra).

“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 predominatingly 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 personal 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."

13. Since the offence under Section 3 of The SC and the ST (Prevention of Atrocities) Act, 1989, does not, *prima facie*, appear to be so grave and nor is so heinous, so as to attract the rigour of the embargo (supra) foisted upon the High Court in verdict (supra). Therefore, the settlement/compromise, as validly entered into, enjoins its being revered. Consequently, even if the afore offence is non-compoundable, this Court does not deem it fit to accept the contention(s) of the learned State counsel, that this Court, may not through recouring the mandate of Section 482 Cr.P.C., quash the FIR. In aftermath when rather thereupons, the chances of the petitioner being convicted are remote as well as bleak. In sequel, the ordering for the trial of the accused, would result in harassment and humiliation, being caused to the accused, besides would defeat the ends of justice.

14. Furthermore, an immense support to the afore made view, is also derived from the judgment rendered by the Punjab and Haryana High Court in case titled as ***Vinod @ Boda and others versus State of Haryana and another 2017(1) R.C.R. (Criminal) 571***, wherein also, the above view has been reiterated.

15. There is merit in the petition, and, the same is allowed. Consequently, after accepting the report of the learned Magistrate concerned, this Court proceeds to quash the FIR (supra).

16. Consequently, the FIR (supra), and, also all subsequent proceedings arising therefrom, are quashed *qua* the petitioner.

(SURESHWAR THAKUR)
JUDGE

04.05.2022

Ithlesh

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No