

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

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CRM-M-48812-2021

Date of Decision : January 25, 2022

SALIM AND ANR

.....Petitioners

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Mr. Satish Chaudhary, Advocate
for the petitioners.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

Reply/affidavit has been filed by the DSP, City Panipat
which is taken on record.

The present petition has been filed under Section 482 Cr.P.C.
for quashing of FIR No. 104 dated 25.1.2017 under Sections 323, 307,
379-B, 34 IPC and Sections 25/54/59 of Arms Act, 1959 on the basis of
compromise deed vide Annexure P-2 qua the petitioners and respective
affidavits Annexures P-3 to P-5.

The learned counsel for the petitioners has submitted that the
present FIR was registered against the petitioners on the basis of a
complaint made by respondent No.2-complainant on the ground that his
neighbour Raja Bhaiyya had borrowed some money from him and when
he demanded money back from him, then he alongwith his brother Nafis

had an altercation with him and both extended to criminal intimidation. On 25.1.2017 at evening 9 o'clock when he was sitting in his office at Jagdish Nagar then Raja Bhaiyya accompanied by a boy came to his office and started beatings him and they put out Rs.2,000/- kept in the drawer of table in his office. Thereafter, Raja Bhaiyya asked the boy to kill him and then the accompanied boy armed with pistol fired at the complainant with an intention to kill him but the complainant caught his pistol and made cry and thereafter one neighbour Vikram @ Islam came and on seeing him, Raja Bhaiyya fled away from his office and the complainant alongwith Islam caught the other boy which on enquiry told his name as Arshad son of Iqbal i.e. petitioner No.2 alongwith his pistol. The said pistol was also handed over to the police at the time of lodging of the FIR.

The learned counsel for the petitioners has submitted that in the present case vide Annexure P-2, a compromise has been effected between the petitioners and complainant-respondent No.2 with the intervention of the respectables of the village and, therefore, the FIR alongwith respective affidavits of complainant and petitioners may be quashed because no useful purpose will be served in case further prosecution is carried on in view of the compromise having been effected between the parties. He also relied upon the judgment of this Court in **Kanwardeep Singh and another Vs. State of Punjab and others**, CRM-M-36087 of 2010 to contend that when the compromise which has been arrived at between the parties and no injury has been suffered then the FIR can be quashed based upon compromise.

On the other hand, Mr. Arya, learned Addl. Advocate General, Haryana has vehemently opposed the quashing of the FIR based upon compromise. He has referred to the affidavit filed by the State and submitted that alongwith the complaint filed by the complainant one country made pistol was also given by the complainant and the said country made pistol was got unloaded at the spot and one cartridge was also recovered which was taken into possession by the police. He has further submitted that after the registration of the FIR, investigation was carried out by the police in a fair and impartial manner. On 26.1.2017, petitioner No.2 had suffered his disclosure statement admitting therein the manner in which he had committed the offence which is cognizable and non-compoundable and in pursuance of his disclosure statement he also got recovered Rs.1500/- and also got demarcated the spot of crime. On 27.1.2017, petitioner No.1 was arrested and suffered his disclosure statement on 28.1.2017 admitting therein the manner in which he has committed the crime. On further investigation, it was found that the other co-accused, namely, Raja Bhaiyya and Vasim were present outside the office and were not involved in the crime but their names have been mentioned in the FIR due to the suspect of previous altercation and, therefore, they were found to be innocent and their names were deleted from the case on 13.2.2017.

The learned State counsel further submitted that the charges in the present case were framed by the trial Court and as per the affidavit dated 16.12.2021 filed by the State, out of 14 prosecution witnesses, 12 witnesses have been examined by the trial Court and they have supported

the prosecution case. He has submitted that now the case is fixed before the trial Court for defence evidence and arguments. He has further submitted that even otherwise also since the case is at the fag end of the trial, the same cannot be quashed based upon compromise. However, learned State counsel has further opposed the quashing of the FIR on the basis of compromise on the ground that the same was not maintainable in view of the fact that the offence involves in the present case was Section 307 IPC and also Section 25 of the Arms Act. He submitted that even if it was a case of no injury still the same cannot be quashed based upon compromise on the ground that firstly the case is at the fag end of trial, secondly an unlicensed country made pistol was deposited by the complainant to the police at the time of lodging of the FIR and a cartridge was also found there and, therefore, the matter was serious in nature. He has further referred to the judgment of the Hon'ble Supreme Court in **State of M.P. Vs. Laxmi Narayan and others, 2019(2) SCC (CrI.) 706** to contend that in such likes the FIR may not be quashed on the basis of compromise as there is nothing to show that non-quashing of the FIR would result in abuse of the process of law. He has, therefore, prayed for the dismissal of the present petition.

I have heard the learned counsels for the parties.

The FIR has been lodged under Sections under Sections 323, 307, 379-B, 34 IPC and Sections 25/54/59 of Arms Act, 1959. As per FIR, although it was a case of no injury but the country made pistol was deposited by the complainant alongwith the complaint as he had nabbed the same from the accused and thereafter the investigation was conducted

by the police and the matter is now fixed for defence evidence and arguments before the learned trial Court. It is a settled law that quashing of an FIR based upon compromise cannot be made in a mechanical manner and the facts and circumstances of each and every case have to be seen and the FIR should not be quashed merely on the ground that the matter has been compromised between the parties. Furthermore, the law with regard to quashing of an FIR based upon compromise under Section 307 IPC has been laid down by the Hon'ble Supreme Court in Laxmi Narayan's case (supra). The relevant portion is reproduced as under:-

“13. (iv) offences under section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is

inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;“

Given the facts and circumstances of the present case wherein an unlicensed country made pistol was deposited by the complainant alongwith the complaint which he allegedly nabbed from accused and the matter is at the fag end of the trial and all the prosecution witnesses have been examined and according to the learned State counsel, they have supported the prosecution case, it cannot be said that in case the FIR is not quashed based upon compromise then it will amount to an abuse of the process of law. No right is vested with the petitioners seeking quashing of the FIR based upon compromise. Such a quashing can be done when the Court is satisfied on the basis of material available on record that the quashing would be justified in order to prevent the abuse of the process of law. However, in the present case there is nothing to show that the non-quashing of an FIR would amount to an abuse of the process of law particularly in view of the fact that when the trial is at the fag end. The judgment relied upon by the learned counsel for the petitioners would not be applicable in the present case and

is totally distinguishable.

Finding no merit in the present petition, the same is, hereby,
dismissed.

However, anything observed here-in-above shall have no
effect on the merits of the case and is meant for deciding the present
petition only.

January 25, 2022
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No