

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

CRM-M-50949-2021

Date of decision: 18.02.2022

Subhash Joshi @ Subhash Chander

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Chanakya Batta, Advocate
for the petitioner.

Mr. Sandeep Vermani, Addl. Advocate General, Punjab
for respondent No.1/State.

Mr. Salinder K. Saini, Advocate
for respondent No.2/Complainant.

(Proceedings through V.C.)

PANKAJ JAIN, J. (ORAL)

The petitioner has approached this Court seeking quashing of FIR No.0052 dated 10.02.2018, registered under Sections 384, 170, 560 of the Indian Penal Code, at Police Station Phillaur, District Jalandhar (Annexure P-1) on the basis of compromise dated 08.10.2021 (Anneuxre P-2) .

2. This Court on 06.12.2021 while issuing notice of motion, passed the following order :-

- “1. Notice of motion.
2. Mr. C.L. Pawar, Sr. DAG, Punjab, waives service of notice on behalf of respondent No. 1.
3. Before proceeding to quash FIR No.0052 dated

10.02.2018, registered at Police Station Phillaur, District Jalandhar, it is deemed appropriate to make directions upon the Illaqa Magistrate concerned to, after summoning the petitioner, and, respondent No.2, and, after his recording their respective testifications, with respect to the voluntariness, and also, with respect to the authenticity of the compromise drawn amongst them, as embodied in Annexure P-2, to make a report with respect to the compromise (supra).

4. The learned Magistrate is also directed to disclose in his report, (a) whether after completion of investigation, report under Section 173 Cr.P.C. has been filed; (b) whether charge has been drawn against the accused; and (c) whether the prosecution evidence has commenced.

5. The afore made report be ensured to be transmitted to this Court within three weeks.

6. For the afore purpose, list on 18.02.2022.”

3. Pursuant to the aforesaid order, report has been received from Sub Divisional Judicial Magistrate, Phillaur, who has reported as under :-

“After having considered the statements of both the parties points vise report is submitted as under :-

(i) In view of statements of both the parties compromise arrived between them appears to be bonafide and is not result of any pressure or coercion in any manner. The compromise effected between the parties i.e., complainant Varinder Kumar and accused Subash Joshi @ Subash Chander appears to be genuine and valid.

(ii) In the present case after completion of investigation, report under Section 173 Cr.P.C. has been filed on 02.07.2018.

(iii) *In this case charge against the accused has already been framed on 14.09.2018.*

(iv) *In the present case till date no any prosecution witness has been examined and case is fixed for prosecution evidence.”*

4. Learned Additional Advocate General, Punjab has argued that in the FIR there are two accused persons, however, the present petition has been filed at the behest of only one of them and in fact it is only the petitioner, who entered into the compromise with the complainant/ respondent No.2. He, thus, contends that FIR cannot be quashed in part *qua* the petitioner only.

5. In response thereto, learned counsel for the petitioner has relied upon the decision passed by a Co-ordinate Bench of this Court, on 16.05.2017 in **CRM-M-37395-2016** titled as '**Rajinder Singh vs. State of Punjab and another**' wherein the same question arose and this Court has held as under :-

{6}. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47, Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604 and State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489, has summed up the

controversy in State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and others, 2003(2) RCR (CrL.) 860 (SC). The legal position summed up in the said judgment is in the following manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent

statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the

grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.”

{7}. Full Bench of this Court in Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.) 1052 considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised Ex-Debita, justitia to prevent abuse of process of Court.”

6. Learned counsel for the petitioner further relies upon the decision of the Supreme Court in **'Jyrajsinh Digvijaysinh Rana vs. State of Gujarat and another', 2012(4) R.C.R.(Criminal) 589**, whereby FIR under Sections 467, 468, 471, 420 and 120-B of the Indian Penal Code, 1860 was quashed *qua* one accused only.

7. Learned counsel appearing for respondent No.2 admits the fact of the parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto *qua* the petitioner only, are quashed.

8. Keeping in view, the law laid down by this Court and Apex Court, the present petition is allowed. FIR No.0052 dated 10.02.2018, registered under Sections 384, 170, 560 of the Indian Penal Code, at Police Station Phillaur, District Jalandhar (Annexure P-1) and all proceedings subsequent thereto are hereby quashed *qua* the petitioner only.

February 18, 2022		(PANKAJ JAIN)
Dpr		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No