

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

205-2

CRM-M-51617 of 2021 (O&M)

Date of decision: 21.03.2022.

Rahul Thakur and another**... Petitioners****Versus****State of Punjab and another****....Respondents****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. Sandeep Arora, Advocate
for the petitioners.

Ms. A.K. Khurana, DAG, Punjab.

VINOD S. BHARDWAJ.J.(Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

1. The instant petition has been filed under Section 482 Cr.P.C., for quashing of FIR No. 104 dated 11.09.2021, under Sections 406, 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation), Act 2014, registered at Police Station Navi Baradari, Jalandhar and all subsequent proceedings arising therefrom on the basis of compromise.

2. Learned counsel for the petitioners submits that there was a minor altercation amongst the petitioner and respondent No.2 (complainant) resulting in registration of the of FIR No.104 dated 11.09.2021, under Sections 406, 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation), Act 2014, registered at Police Station Navi Baradari, Jalandhar (Annexure P-1) and that with the intervention of the respectables

from both the sides, the matter has been settled and amicably resolved. It is further submitted that the compromise amongst the parties was effected on account of free will and without any pressure and coercion.

3. Vide order dated 10.12.2021, the parties were directed to appear before the Trial Court/Illaq Magistrate to get their statements recorded and the Trial Court/Illaq Magistrate was further directed to send the report regarding the genuineness of the compromise and to also intimate whether any criminal proceedings against the petitioners are pending.

4. In compliance to the said order, a report from the Judicial Magistrate First Class, Jalandhar has been received vide letter No. 54 dated 02.02.2022. The Judicial Magistrate First Class, Jalandhar has reported as under:-

“5. I have gone through the statement given by complainant Gursharan Singh and accused Vikas Thakur and Rahul Thakur. In view of the statements, I am of the considered opinion that the compromise has been effected voluntarily between the parties and the same is without any coercion and undue influence. Compromise between them appears to be genuine.

6. The undersigned is sending the report as directed by the Hon'ble Punjab & Haryana High Court, Chandigarh as follows:-

i. As per the statement of IO SI Sukhchain Singh, there are only two accused in the present FIR.

ii. As per the statement of IO SI Sukhchain Singh the accused have not been declared PO in any case.”

5. The full Bench of this Court in the matter of “**Kulwinder Singh and others versus State of Punjab and another**” reported as **(Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052** has been observed

as under:

“(28) To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

*(29) In **Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and Ors.**, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:*

“The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.”

(30) The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

(31) No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

(32) The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence

of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

(33) The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.

(34) The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and everlasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

6. The legal principles as laid down for quashing of the judgment were also approved by the Hon'ble Supreme Court in the matter of **Gian Singh Versus State of Punjab and another**, (2012) 10 SCC 303. Still

further, the broad principles for exercising the powers under Section 482

were summarized by the Hon'ble Supreme Court in the matter of **“Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others versus State of Gujarat and another” (2017) 9 SCC 641**, the same are extracted as under:

16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6 *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;*

16.7 *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;*

16.8 *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;*

16.9 *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

16.10 *There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon*

the financial or economic system will weigh in the balance.

7. It is evident that in view of the amicable resolution of the issues amongst the parties, no useful purpose would be served by continuation of the proceedings. The furtherance of the proceedings is likely to be a waste of judicial time and there appears to be no chances of conviction.

8. The Hon'ble Supreme Court in the matter of **“Ramgopal and another versus State of Madhya Pradesh”** reported as **2021 SCC ONLINE SC 83**, held that the matters which can be categorized as personal in nature or in the matters in which the nature of injuries do not exhibit mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest, the Court can quash the FIR in view of the settlement arrived at amongst the parties. The observation of the Hon'ble Supreme Court is extracted as under:

“19. We thus sum up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences ‘compoundable’ within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

9. A perusal of the FIR shows that the dispute in the case relates to obtaining a study visa. It is contended that even though an amount as demanded by the petitioner was transferred, however, the petitioner's visa was declined by the embassy. Learned counsel for the petitioner contends that the settlement has already been executed between the parties and the amount so received by the accused has already been returned. The dispute in question happens to be a money dispute between the private parties that may not be conceived as a dispute that is shocking to the conscience of the Court or is likely to disrupt public peace and public order. It is also evident that FIR in question was registered on 11.09.2021 and the petitioners have been successful in settling the dispute at the initial stage itself. The parties have chosen to amicably resolve the matter amongst themselves and to give it a quietus. The investigation in the case is at initial stages and continuation of the proceedings is only likely to burden the investigating agency as well as the court with litigation that is not likely to succeed and the entire exercise would only be futile. No interest of justice would be advanced by incarcerating the petitioner and forcing them to undergo agony of a protracted criminal trial.

10. Considering the facts of the instant case and noticing the principles laid down by the Apex Court in “**Gian Singh Versus State of Punjab and another**”, (2012) 10 SCC 303, “**Ramgopal and another versus State of Madhya Pradesh**” reported as **2021 SCC ONLINE SC 834** and also by the Full Bench of this Court in “**Kulwinder Singh and others versus State of Punjab and another**”, 2007 (3) RCR (Criminal) 1052, that the dispute involved in the instant case pertains to offence under Sections 406, 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation),

Act 2014, which cannot be perceived as falling within the prohibited category or as an offence that is heinous and grossly shocking to the conscience of the Court or having a wide pervasive impact on the social or public order, the instant petition is allowed and the case FIR No. 104 dated 11.09.2021, under Sections 406, 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation), Act 2014, registered at Police Station Navi Baradari, Jalandhar and all subsequent proceedings arising therefrom **are hereby quashed**, in light of the compromise (Annexure P-2). However, the same would be subject to payment of costs of Rs. 15,000/- each to be deposited by the petitioners with the ***‘Poor Patients Welfare Fund’ of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh***, within one month from the date of receipt of certified copy of this order.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

March 21, 2022
rekha sharma

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No