

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

CRM-M-47585-2019

**Judgment reserved on: 09.03.2022
Judgment pronounced on: 19.04.2022**

KAMLESH KUMAR HEDA

... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Arvind Rajotia, Advocate for the petitioner.

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

Mr. Pratham Sethi, Advocate for respondent No.2.

VINOD S. BHARDWAJ. J.

1. The petitioner has approached this Court seeking quashing of FIR No.65 dated 22.03.2019 registered under Sections 406/120-B IPC at Police Station City Tarn Taran, District Tarn Taran (Annexure P-2) and all subsequent proceedings arising therefrom on the strength of compromise/Affidavit dated 07.10.2019 (Annexure P-3) entered between the parties.

2. Learned counsel for the petitioner submits that the dispute in question pertained to an allegation of alleged unauthorized removal of the equipments-plant & machinery from the industrial unit that had been taken over by the Bank under the SURFAESI ACT, 2002 Act resulting in registration of the FIR No.65 dated 22.03.2019 registered under Sections 406/120-B IPC at Police Station City Tarn Taran, District Tarn Taran (Annexure P-2) 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 orders dated 07.11.2019 and 09.12.2019 respectively, the parties were directed to appear before the Illaqa Magistrate to get their statements recorded and the Illaqa 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 of the said order, a report from the Chief Judicial Magistrate, Tarn Taran has been received vide letter No. 1017 dated 11.12.2019. The Chief Judicial Magistrate, Tarn Taran has reported as under:-

“It is submitted that the petitioner and respondent No.2 appeared in person today along with their respective counsel S/Sh.Vivek Sharma and Sudhir Salwan, Advocates and also produced their Aadhaar Cards as proof of their identification. The statements of both the parties were recorded in the Court and from their statements, it emerged that there is no lawful compromise between the petitioner and respondent No.1. The paragraph-wise report, as desired by the Honourable High Court, is submitted as follows:

- 1. The respondent No.2 has stated to have compromised through petitioner but there are number of other accused persons also, who are neither petitioners before Honorable High Court nor they have been granted bail by any Court. Since the respondent No.2 has not specifically compromised with the petitioner, therefore, the compromise between the parties cannot be termed as genuine. The allegations against the petitioner and other co-accused is for the offence punishable under Section(s) 409 of Indian Penal Code but the Investigating Agency has wrongly booked him under section(s) 406 of Indian Penal Code, which is a lesser*

offence.

2. None of the accused persons are appearing before the Court of undersigned.

3. As per record, no other proceedings, except the First Information Report in question is pending against accused/petitioner.”

5. A perusal of the report sent by the Chief Judicial Magistrate, Tarn Taran, the offence in question would prima facie fall under Section 409 IPC, however, the Investigating Agency has investigated the case under Section 406 IPC which is a lesser offence. The FIR in question has been registered on 22.03.2019 and the petition has been filed for seeking quashing of the FIR and all consequential proceedings arising therefrom. There is no material on record on the basis whereof the offence may be construed as having been registered under Section 409 IPC. However, as the said aspect has been noticed and pointed out by the Chief Judicial Magistrate, Tarn Taran, it has necessitated this Court to examine whether the FIR that has been registered for an offence under Section 406 IPC but where offence under Section 409 IPC may be also made out can be quashed by this Court. While dealing with a petition under Section 482 Cr.P.C. for an offence under Section 409 IPC in the matter of **“Madan Mohan Abbot versus State of Punjab”** passed in **Civil Appeal No.555 of 2008** dated 26.03.2008, the Hon’ble Supreme Court held as under:

“4. We have heard the learned counsel for the parties. Concededly a compromise deed has been executed between the parties on 25th January 2002 in which it has been inter-alia recorded as under:

"Whereas for the past some time some dispute had arisen in between both the parties regarding which first party has got an FIR No.155/2001 registered under Sections 379/406/409/418/34 of IPC in P.S. Kotwali Amritsar. After the registration of aforesaid criminal case a compromise has been arrived at in

between both the parties. As a result of which both the parties have resolved their differences once for all. Now second party does not owe anything to the first party and first party has undertaken to cooperate with second party in every manner to get the aforesaid FIR cancelled/quashed from appropriate Forum. Furthermore first party has no objection if the Bail of second party be accepted. Rather first party shall cooperate with second party in every manner to secure bail for him. In view of the compromise arrived at in between the parties entire differences and tensions those had arisen in between both the parties stands resolved and both the parties have undertaken not to file any proceedings either civil or criminal or any other such like proceedings against one another in any court of law at Amritsar or any other place within or outside India. This compromise is hereby executed in between both the parties in the presence of marginal witnesses on this 25th day of January 2002 at Amritsar."

5. *It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of*

the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law. We see from the impugned order that the learned Judge has confused a compounding of an offence with the quashing of proceedings. The outer limit of Rs.250/- which has led to the dismissal of the application is an irrelevant factor in the later case. We accordingly allow the appeal and in the peculiar facts of the case, direct that FIR No.155 dated 17th November 2001 P.S. Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed.”

6. Further, in its judgment dated 19.12.1996, passed in **Criminal Misc. No. 7533-M of 1996** titled as **“Mohinder Kumar versus State of Punjab”**, this Court had held as under:

“9. It cannot be disputed that the High Court has inherent powers to pass orders under the code to secure the ends of justice. Hence, if it comes to the knowledge of the High Court that in recording the compromise of the case, ends of justice would be secured, it is essential to pass such orders. It may be further noted that even otherwise, not to allow compromise may also result in such circumstances leading to the same result because the complainant in that case would not support the prosecution story, and the Court instead of advancing the cause of justice, would encourage perjury and if that is not done at trial, evil thoughts will again start in the minds of the parties for having another innings of battle.”

Xx xx xx xx xx
Xx xx xx xx xx

11. In the present case, the parties have entered into a compromise vide deed dated 15.04.1996 (Annexure P-2). No useful purpose would be served if the investigation of the F.I.Rs.in

question is allowed to be carried on or charge-sheet is allowed to be filed or if the petitioner/petitioners are required to face the trial inasmuch as the complainant would not support the prosecution in view of the compromise (Annexure P-2). In these circumstances further proceedings in the F.I.Rs would be an exercise in futility which ought to be avoided.

12. As a result of the above discussion, I accept both these petitions and hereby quash both the impugned F.I.Rs bearing No.8 dated 23.01.1995 registered at Police Station Division No.6, Ludhiana for offences under Sections 406/409 Indian Penal Code and F.I.R. No. 241 dated 25.12.1994 registered at Police Station Kotwali, Barnala for the offences under Sections 420/506 Indian Penal Code and all the consequent and subsequent proceedings arising therefrom.”

7. The FIR registered under Section 409 IPC was also quashed by this Court vide judgment dated 12.11.2013 passed in **Criminal Misc. No.M-32337 of 2013** titled as **“Nand Kishore Sharma versus State of Punjab and others,** wherein it was observed as under:

“Hon'ble the Supreme Court in the case of B.S.Joshi and others v. State of Haryana and anr., reported as 2003 (2) RCR (Criminal) 888, in para 6 and 11, held as under:-

“6. In Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors., 1997 (4) R.C.R. (Criminal) 761: (1998) 5 SCC 749, this Court with reference to Bhajan Lal's case observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes

necessary to exercise utmost care and caution which invoking such powers.

*11. In **Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandojirao Angre & Ors., 1988 (1) R.C.R. (Criminal) 565 : (1988) 1 SCC 692**, it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appears in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.”*

Since the dispute between the parties has been settled by way of compromise. The complainant-bank has no grouse against the petitioner as earnest money has been deposited with the bank and the respondent-bank is satisfied and does not want to proceed with the case against the petitioner and hence has no objection in quashing of FIR.

Accordingly, the present petition is allowed and impugned criminal proceedings arising out of FIR No. 146 dated 31.08.2012 registered at Police Station Matour, District SAS Nagar Mohali for offence punishable under Section 409 IPC and all subsequent proceedings arising therefrom qua the petitioner namely Nand Kishore Sharma are hereby quashed.”

8. Again, in the matter of **“Divya Malhotra and others versus State of Haryana and others”** passed in **CRM-M-No.33565-2020** dated 24.03.2021, the FIR was quashed and it was observed as under:

“The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 185 dated 29.08.2020 under Sections 406, 420, 120-B IPC (Section 409 IPC added later on) registered at Police Station Bilaspur, district Yamuna Nagar on the basis of a compromise dated 08.09.2020 (Annexure P-2) entered into between the parties.”

In view of the above, continuation of the proceedings in pursuance of the afore-referred FIR in which the offences are compoundable and where the trial is at the initial stage and also the matter having been compromised, would be an abuse of the process of law and in terms of the law laid down by the Full Bench of this Court in Kulwinder Singh and others Vs. State of Punjab and others, 2007 (3) RCR (Criminal) 1052, this Court deems it just and proper to allow the petition and resultantly quash FIR No. 185 dated 29.08.2020 under Sections 406, 420, 120-B IPC (Section 409 IPC added later on) registered at Police Station Bilaspur, district Yamuna Nagar and all proceedings arising therefrom qua the petitioners.”

9. 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 ever-lasting 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.

10. 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 verus 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 mis-demeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

11. 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.

12. 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.

13. A perusal of the FIR shows that the dispute relates to an alleged removal of the property from the premises that had been in the possession of the Bank. It is alleged that there was misappropriation of the machinery from the factory with a view to derive wrongful gain and to cause wrongful loss to the complainant-applicant. The dispute thus relates to property and monetary loss allegedly suffered by the complainant. Such monetary loss stands duly compensated by the accused and the dispute stands resolved. The FIR in the case relates to the year 2019 and there is no allegation that any other case of such a similar nature had been registered against the petitioner prior to the registration of the instant FIR or that he has indulged in any other similar case after the registration of the instant FIR as well. The FIR in question has not been registered at the instance of the Bank but has been registered at the behest of the applicant who claims to be the owners/proprietor of the Firm, the premises whereof had been taken into possession by the Bank under the SARFAESI Act. Invariably, the complainant was in default of the loan amount and that he has repaid the same under the One Time Settlement. The Bank has not suffered any loss in the said transaction and has not claimed any wrongful deprivation. There is nothing on record as to the nature of

machinery allegedly removed from the premises and the valuation thereof. The nature of allegations do not reflect gross abuse of authority by a public officer or that its impact affects public at large and there had been denial or deprivation of benefits to the general public. The offence as referred to in the petition would not fall under the prohibited category as it is more proximate to an bi-partite dispute. It is not likely that the complainant will depose against the accused especially when the matter has been settled. The nature of the offence and its settlement does not defeat the larger public interest. The continuation of the proceeding is only likely to extend the agony of protracted criminal prosecution and its not likely to yield any benefit. Continuation of the same would only be an exercise in futility and an unnecessary burden on the system of administration of criminal justice.

14. 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 406/120-B IPC 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.65 dated 22.03.2019 registered under Sections 406/120-B IPC at Police Station City Tarn Taran, District Tarn Taran (Annexure P-2) and all subsequent proceedings arising therefrom **are hereby quashed**, qua the petitioners in light of the compromise (Annexure

P-2). However, the same would be subject to payment of costs of Rs. 20,000/- by the petitioner to be deposited with the “**Punjab State Legal Service Authority**”, within one month from the date of receipt of certified copy of this order.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 19 , 2022
Vishal Sharma

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