

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CRR-3031-2019 (O&M)

Decided on : 02.03.2022

Taar Singh

. . . Petitioner

Versus

Yashpal

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Deepak Arora, Advocate
for the petitioner.

Mr. Rajbir Singh, Advocate
for the respondent.

VIKAS BAHL, J. (Oral)

This is a criminal revision in which the challenge is to the judgment dated 03.04.2017 vide which the Judicial Magistrate 1st Class, Sangrur has convicted the present petitioner under Section 138 of Negotiable Instruments Act, 1881 and had sentenced him to undergo rigorous imprisonment for a period of two years and to pay compensation to the tune of Rs.3,00,000/- to the complainant.

Challenge is also to the judgment dated 21.09.2019 vide which the appeal filed by the petitioner has also been dismissed.

Brief facts of the case are that the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') for the dishonor of a cheque dated 25.01.2015 for a sum of Rs.2,00,000/- which was returned vide memo

dated 04.04.2015 with remarks “insufficient funds”. Thereafter, a legal notice was issued and when no payment was made in spite of the issuance of legal notice, a complaint under Section 138 of the Act was filed. The complainant was examined as CW-1 and he had duly proved on record the original cheque Ex. C-1, memo Ex. C-2, legal notice Ex. C-3 and postal receipt Ex. C-4 and returned registered envelop Ex. C-5. After considering the documents and the evidence on record, the Judicial Magistrate 1st Class, Sangrur convicted the petitioner under Section 138 of the Act and sentenced him as has been mentioned hereinabove. The Additional Sessions Judge, Sangrur, after reconsidering entire matter, dismissed the appeal filed by the present petitioner and thus, upheld the sentence and the conviction of the petitioner.

Learned counsel for the petitioner as well as learned counsel for the respondent have stated that the matter has been compromised after passing of the judgment of conviction by the appellate Court and had moved an application bearing No. CRM-35433-2019 for compounding of the offence. Reliance has been placed upon the compromise dated 25.10.2019 (Annexure P-1). The said compromise is reproduced hereinbelow:-

“Taar Singh son of Jit Singh, resident of Quarter No.193, SLIET Longowal, Sangrur.

2. Yashpal Jindal son of Madan Lal, resident of Street No.9, Kishan Bagh Colony, Sangrur.

That party No.1 had filed an appeal No.RA/207/2017 before the Court of Additional Sessions Court, Sangrur which

has been decided on 21.02.2019. Now in context with the said matter Party No.1 has effected compromise with party No.2 with the intervention of the respectables and as per the same, now there is no dispute with relation to the monetary transactions. Both the sides will not raise any issue against each other while filing legal proceedings. With reference to the abovesaid case if there is any other court case pending between the parties before any court both the parties would be bound to withdraw the same.

This Compromise has been written so that it can come into play at the time of the relevant need.

Dated 25.10.2019

Party No.1 Taar Singh son of Jit Singh, resident of Quarter No. 193, SLIET Longowal, Sangrur.

Party No.2 Yashpal Jindal son of Madan Lal, resident of Street No.9, Kishan Bagh Colony, Sangrur.

Witness:

*Harjinder Singh son of
Shri Maan Singh
Resident of Peerkot,
District Bathinda*

Witness

*Rahul Jindal son of
Yashpal Jindal,
resident of Kishanpura
Basti, Sangrur*

*TRUE TRANSLATED TYPED COPY
ADVOCATE”*

A perusal of the said compromise would show that the matter has been settled and there is no dispute left between the petitioner and the respondent with respect to the money transactions.

Learned counsel for the petitioner and respondent have submitted that the said compromise is genuine, bonafide and without any influence or undue pressure and have jointly submitted that the present petition be allowed and the impugned judgments be set aside.

This Court has heard the learned counsel for the parties and

has perused the paperbook.

The record of the present case would clearly show that the compromise had been effected between the parties and the said compromise has been reiterated by both the counsel during the course of arguments. The matter seems to have been finally settled and the said compromise will bring peace and harmony between the petitioner and the respondent.

The Coordinate Bench of this Court in CRM-M-17272-2015 dated 28.01.2016 titled as ***Ram Parkash and others Vs. State of Punjab and othres***, has allowed the petition under Section 482 Cr.P.C. under similar circumstances. The relevant portion of the said judgment is reproduced hereinbelow:

“Prayer in this petition filed under Section 482 Cr.PC is for quashing of the FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar, on the basis of compromise dated 06.02.2015(Annexure P-4) and all other subsequent proceedings arising therefrom including the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the accused-petitioners, were convicted and sentenced...

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Quashing of the aforesaid FIR and setting aside of the impugned judgment and order of sentence dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, is sought on the basis of compromise dated 06.02.2015 (Annexure P4), entered into between the parties during the pendency of the appeal before this Court.

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*This Court in the case of **Sube Singh and another Versus State of Haryana and another 2013(4) RCR (Criminal) 102** has considered the compounding of offences at the appellate stage and has observed that even when appeal against the conviction is pending before the Sessions Court and parties entered into a compromise, the High Court is vested unparallel power under Section 482 Cr.PC to quash criminal proceedings at any stage so as to secure the ends of justice and has observed as under:-*

“15. The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.

- 1. As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in **Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) R.C.R. (Criminal) 910 : (2008)5 SCC 794**, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would*

be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.

17. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.

18. xxx xxx

19. xxx xxx

20. xxx xxx

21. In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there

is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.

22. Consequently and for the reasons afore-stated, we allow this petition and set aside the judgement and order dated 16.03.2009 passed in Criminal Case No. 425-1 of 2000 of Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise. Resultantly, the appeal preferred by the petitioners against the above-mentioned order dated 16.03.2009 would be rendered infructuous and shall be so declared by the first Appellate Court at Hisar.”

*Similarly, in the case of **Baghel Singh Versus State of Punjab 2014(3) RCR (Criminal) 578**, whereby the accused was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for two years, the parties entered into compromise during the pendency of the appeal. This Court while relying upon the judgment of **Lal Chand Versus State of Haryana, 2009 (5) RCR (Criminal) 838** and **Chhota Singh Versus State of Punjab 1997(2) RCR (Criminal) 392** allowed the compounding of offence in respect of offence under Section 326 IPC at the appellate stage with the observation that it will be a starting point in maintaining peace between the parties,*

such offence can be compounded.

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Accordingly, FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar and all subsequent proceedings arising therefrom, qua the accused-petitioners, are quashed, on the basis of compromise dated 06.02.2015 (Annexure P-4), subject to payment of costs of Rs.25,000/-, to be deposited with the Punjab State Legal Services Authority, Chandigarh.

Consequently, the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, are set aside subject to payment of cost.”

This Court in a judgment dated 09.03.2017 passed in CRR no.390 of 2017 titled as **“Kuldeep Singh vs. Vijay Kumar and another”** has held as under:-

*“Reliance can be placed on **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298 and Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097.** The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

*The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097,** would be squarely fortified if the compromise in question is allowed to be effected*

between the parties with leave of the Court.

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

*The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in **Damodar S. Prabhu's case (supra)** to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”*

Reliance in the abovesaid judgment was also placed upon the judgment of the Hon'ble Supreme Court in **Damodar S. Prabhu's case (supra)** and thus, as per settled law, this Court has the power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

Keeping in view the fact that the present matter has been compromised and the compromise is genuine and bona fide, the present revision petition is allowed and impugned judgment and order of sentence dated 03.04.2017 as well as the impugned order dated 21.09.2019 are set aside in view of the compromise and the petitioner and respondent are permitted to compound the offence. The same is however, subject to the petitioner depositing 15% of the cheque amount i.e. Rs.30,000/- (2,00,000*15/100) with the Punjab State Legal Services Authority within a period of one month from today

However, it is made clear that in case, the said amount is not deposited within the stipulated period, then the present petition would be

deemed to have been dismissed.

All the pending miscellaneous applications, if any, stand disposed of, in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

March 2nd, 2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No