

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(131)

CRM-47403-2022 in/and
CRM-M-52104-2019
Date of Decision: 19.12.2022

Partap Singh @ Chani and others

--Petitioners

Versus

State of Punjab and another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Amit Dhawan, Advocate
for the petitioners

Mr. Harpreet Singh, Addl. AG, Punjab.

Mr. Prabhjot Singh Bedi, Advocate
for respondent No.2.

RAJESH BHARDWAJ.J (Oral)

CRM-47403-2022

Prayer in the present application is for preponing the date of hearing in the main case.

For the reasons mentioned in the application, main case is preponed and taken up on board today itself.

CRM-M-52104-2019

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.207 dated 21.09.2016, under Section 354-B of IPC (Sections 354, 120-B of IPC added later on), registered at Police Station City Jagraon, District Ludhiana along with subsequent proceedings arising therefrom on the basis of compromise (Annexures P-7 and P-8) with further prayer to set aside the judgment dated 04.02.2019 passed by learned Judicial Magistrate Ist Class, Ludhiana whereby petitioners were convicted and sentenced for 03 years under Sections 354, 120-B, 354-B IPC.

Brief facts of the present case are that respondent No.2 i.e the complainant lodged the FIR in question against the petitioners-accused. It was alleged that she was doing household work and on 16.09.2016, she along with her husband and children Disha aged 15 years, son Ansh aged 3 years went towards Kamal Chowk for a walk after taking their dinner, some boys were standing near the specific upper place (Thadi) on the left side when they went towards Kamal Chowk to Jhanshi Chowk and reached near them, then two boys suddenly came around them and removed the trouser of her night suit with an intention to insult her. Her husband was behind her. When her husband shouted then both of them ran away from the spot and some boys laughed and clapped by standing there. Her husband chased them and identified one as Maniza son of Kaku and Ravi Kumar @ Golu son of Rachpal Singh. At that time there was light and time was about 10:30 pm. She was insulted in front of her family and other people at Chowk. Thereafter, the FIR was lodged to take legal action against the above-said accused. The investigation commenced and on completion of the same, the challan was presented. On the conclusion of the trial, accused Partap Singh @ Chani, Maniza, Ravi Kumar @ Golu and Gagandeep Singh @ Ganga were convicted and sentenced under Sections 354, 354-B IPC and Section 120-B IPC for 03 years each rigorous imprisonment by the trial Court vide its order dated 04.02.2019. The accused-petitioners challenged the same by filing an appeal before the learned Sessions Court at Ludhiana and the same is pending adjudication. During the pendency of the appeal, good sense prevailed and with the intervention of the respectables, the parties entered into a compromise and decided to bury the hatchet. The petitioners approached this Court by way

the present petition for quashing of the FIR and consequent proceedings arising therefrom on the basis of the compromise arrived at

Learned counsel for the petitioners submits that the prosecution of the petitioners is nothing but an abuse of the process of the Court. He submits that though the petitioners have already been convicted by the Court of competent jurisdiction, however, during the pendency of the appeal before the District Court, Ludhiana, the parties have arrived at a compromise and respondent No.2 does not want to prosecute the petitioners any more. Thus, the FIR and the subsequent proceedings alongwith judgment and conviction order dated 04.02.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana may kindly be quashed. Learned counsel for the petitioners has relied upon the Full Bench Judgment of this Court titled as **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR 1052; Ramgopal and another vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322; and Sube Singh and another vs. State of Haryana and another, 2013(4) RCR (Criminal) 102.**

Learned counsel for respondent No.2 has supported the contentions of learned counsel for the petitioners, whereas, learned State counsel has opposed the same.

This Court vide order dated 07.12.2019 directed the parties to appear before the Appellate Court for recording their statements, as contended before the Court, and the Appellate Court was also directed to send its report.

In pursuance to the same, learned Additional District and Sessions Judge, Ludhiana has sent her report dated 17.01.2020 to this Court.

With the report she has also annexed the original statement of respondent

No.2, Jyoti Arora; statements of petitioners namely, Gagandeep Singh @ Ganga, Ravi Kumar @ Golu, Maniza, Partap Singh @ Chani recorded on 15.01.2020. On the basis of the statements, learned Chief Judicial Magistrate, Amritsar learned Additional District and Sessions Judge, Ludhiana has concluded in the report that the compromise effected between the parties is genuine, voluntary, without any coercion or undue influence. It is also mentioned that none of the petitioners was declared proclaimed offender in this case.

I have heard learned counsel for the parties, perused the record and the report sent by learned Additional District and Sessions Judge, Ludhiana.

A bare perusal of statutory provision of the 482 Cr.P.C. would show that the High Court may make such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 320 Cr.P.C. is equally relevant for consideration, which prescribes the procedure for compounding of the offences under the Indian Penal Code.

Hon'ble Supreme Court in **Ramgopal and another V. State of Madhya Pradesh (supra)** has held as under:

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident,

the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C., 1973 would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C., 1973 may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. v. State of Punjab & Ors.*, (2014) 6 SCC 466 and *Laxmi Narayan (Supra)*.

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19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C., 1973 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., 1973 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., 1973. 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.”

Keeping in view the nature of offences allegedly committed

and the fact that both the parties have amicably settled their dispute, the

continuation of criminal prosecution would be a futile exercise. The Hon'ble Supreme Court in a number of cases including ***Narinder Singh and others Versus State of Punjab and another, 2014 (6) SCC 466***; ***B.S.Joshi and others vs State of Haryana and another (2003) 4 Supreme Court Cases 675*** followed by this Court in Full Bench case of ***Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR 1052*** have dealt with the proposition involved in the present case and settled the law.

Thereafter, Hon'ble Supreme Court in *Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303* further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in ***State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335***. Para 61 of the judgment reads as under:-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not

private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Applying the law settled by Hon'ble Supreme Court in plethora of judgments and this High Court, it is apparent that when the parties have entered into a compromise, then continuation of the proceedings would be merely an abuse of process of the Court and by allowing and accepting the

prayer of the petitioners by quashing the FIR would be securing the ends of justice, which is primarily the object of the legislature enacting under Section 482 Cr.P.C.

As a result, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and hence, FIR No.207 dated 21.09.2016, under Section 354-B of IPC (Sections 354, 120-B of IPC added later on), registered at Police Station City Jagraon, District Ludhiana; judgment and conviction order dated 04.02.2019 passed by learned Judicial Magistrate Ist Class, Ludhiana along with subsequent proceedings arising therefrom are hereby quashed *qua* the petitioners on the basis of compromise.

The appeal pending before the learned Appellate Court would automatically render infructuous.

Needless to say that the parties shall remain bound by the terms and conditions of the compromise and their statements recorded before the Court below.

Petition stands allowed.

(RAJESH BHARDWAJ)
JUDGE

19.12.2022
m.sharma

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