

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

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**CRM-M-51844-2019 (O&M)
Date of Decision: 14.02.2022**

MOHAMAD SAI AND OTHERS

....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present: Mr. Manoj Kumar Sharma, Advocate
for the petitioners.

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

Mr. Ritesh Pandey, Advocate
for respondents No. 2 to 4.

VINOD S. BHARDWAJ, J.(Oral)

By means of the instant petition, prayer is sought for quashing of case FIR No. 141 dated 04.09.2019 under Sections 365 read with Section 34 IPC registered at Police Station Subhanpur, District Kapurthala (Annexure P-1) and all consequential proceedings arising therefrom, on the strength of compromise dated 18.09.2019 (Annexure P-2) entered between parties.

2. The case came up for hearing on 06.07.2021, when the parties were directed to appear before the Illaqa Magistrate to get their statements recorded with regard to the genuineness of the compromise and the Illaqa Magistrate was required to submit a report as to whether the compromise have been effected without any undue influence or coercion.

3. The statement of the parties was eventually recorded by the Judicial Magistrate on 06.09.2021 and a report in this regard was furnished. The extract of the said report submitted vide letter No. 466 dated 08.09.2021 is as under:

“In this case, FIR No.141 dated 04.09.2019, under Sections 365, 34 of IPC, PS Subhanpur, District Kapurthala, the statement of complainant Reshma, victim Ajay (deaf and dumb), Bittu and accused Mohamad Sai, Shamdeen, Jasvir Singh and Amandeep Singh were recorded on 06.09.2021, wherein they have stated that they have compromised the matter with each other with their own free will, without any pressure, coercion or any undue influence, Both the parties were duly identified by their respective counsels and also placed on record their Aadhar Cards. Further, as per statement of complainant Reshma none of the accused has been declared Proclaimed offender. It has also been stated by the accused that they are not involved in any other case. The FIR in the present case was lodged at the instance of Reshma wife of Babu Deen resident of village Raipur Rajputtan, Tehsil Bholath, District Kapurthala. It is clear from the statements of the complainant, victim as well as accused persons as well as after their examination in the Court, that they have entered into compromise and solved their differences, without any undue influence, coercion and threat. As such, in my opinion, the parties have entered into compromise voluntarily. The report is accordingly submitted please.”

4. A perusal of the same shows that the parties have amicably resolved their differences and the settlement is voluntarily, without any undue influence, pressure, coercion or threat.

5. Learned counsel for the petitioners points out that the FIR in question had been instituted on the statement of Reshma wife of Babu Deen pertaining to abduction of Ajay by the accused persons. The report has been sent by the Illaqa Magistrate after having recorded the statement of Ajay (the victim) of the offence as well as that of the witness alongwith the accused. Even, the compromise also states that both the parties are related to each other and that the victim Ajay is now staying with the complainant-Reshma.

6. Ms. A.K. Khurana, DAG, Punjab does not raise any objection to the quashing of the FIR considering that as per the report furnished by the Illaqa Magistrate, the parties have resolved their differences voluntarily.

7. Mr. Ritesh Pandey, Advocate for respondents No. 2 to 4 reiterates the existence of the compromise as also the statements made before the Illaqa Magistrate acknowledging the compromise.

8. A perusal of the FIR shows that the offence in question relates to harm against the person of an individual and the same is not in the nature of an offence against the society at large. Besides, the dispute seemingly is amongst the parties that are relatives and the same stands resolved with the intervention of the respectables of the family.

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:

“(27) *Shri R.S. Cheema, learned Senior Advocate, who assisted the Bench as Amicus Curiae, highlighted the inadequacies of the criminal justice system in order to*

propound and promote the principle that under Section 482 of the Cr.P.C., the High Court can effectively exercise its power in an appropriate case and intervene to quash an F.I.R. even when the case discloses a non-compoundable offence and where the parties have voluntarily entered into a compromise. To illustrate, he submitted that the Legislature, in its wisdom, is seeking to introduce a pre-bargaining in the country and in this scenario, to curtail the power under Section 482 by reading into the provisions of law the non-existing lines would, indeed, be a travesty of justice, especially in view of the fact that there is a wide spread tendency in the society now to use the arm of criminal law to settle civil disputes and he reiterated certain contingencies which were also placed before the Bench during the course of hearing in Dharambir's case (supra). Some of the guidelines were as follows:

- a. Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.*
- b. Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.*
- c. Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.*
- d. Minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet*

another offence which remains non- compoundable is Section 506(II) IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148 IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act No. 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148 IPC compoundable offences by amending the schedule under Section 320 Cr.P.C.

- e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.*
- f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.*

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

(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 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.

11. The dictum of law laid down by the Hon'ble Supreme Court in the matter of '*Gian Singh versus State of Punjab*' (Supra) was reiterated in the judgment of '*Narinder Singh versus State of Punjab*' reported as **(2014) 6, SCC 466** wherein it was observed as under:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the

criminal proceedings:

(29.1) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(29.2) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(29.3) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(29.4) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

12. The inherent powers of the High Court ought to be exercised to prevent the abuse the process of law and to secure the ends of justice. The respondent No.2 has agreed to the quashing of the FIR in question and all consequential proceedings arising therefrom out of her own free will and accord. As the matter has been settled and compromised amicably, no useful purpose would be served by continuation of the proceedings. The furtherance thereof would only be a waste of judicial time in addition to unwarranted harassment of the parties concerned.

13. The incorporation of the inherent powers under Section 482 Cr.P.C. is meant to deal with the situations arising in the absence of express provision of law and to secure ends of justice. The said power should not be exercised to circumvent express provision of law. Where the High Court is convinced that the offence(s) is entirely personal in nature and therefore does not affect a public peace or tranquility and where it feels that the quashing of such proceedings on account of compromise would bring about peace and secure ends of justice, it should not hesitate to quash them.

14. I am of the view that since the compromise entered into between the parties is voluntary, without coercion or pressure, there should not be no impediment in quashing the FIR No. 141 dated 04.09.2019 under Sections 365 read with Section 34 IPC registered at Police Station Subhanpur, District Kapurthala (Annexure P-1) and all consequential proceedings arising therefrom are quashed subject to payment of costs of Rs. 10,000/- 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 today.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 14, 2022

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No