

236

2023:PHHC:061847

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

CRM-M-5373-2020 (O&M)

Date of Decision: 27.04.2023

Nirbhai Singh and others

...Petitioners

V/S

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Angrej Singh, Advocate for
Mr. J.S. Brar, Advocate
for the petitioners.

Mr. Madhur Sharma, AAG Punjab
for respondent No.1-State.

Mr. Nishan Singh Chahal, Advocate
for respondents No.2 to 4.

DEEPAK MANCHANDA J.(ORAL)

CRM-4663-2020

Exemption is granted from filing certified copies of FIR, compromise, affidavit and Aadhar Card, and the same are taken on record as (Annexures P-1 to P-4), subject to all just exceptions.

Application stands disposed of.

CRM-M-5373-2020

This petition has been filed under Section 482 Cr.P.C. praying for the quashing of FIR No.74 dated 26.09.2019, registered under Sections 323, 341, 34 of the Indian Penal Code and Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, at Police Station Bariwala, District Sri Muktsar Sahib (Annexure P-1) and all the subsequent proceedings

emanating therefrom on the basis of compromise dated 11.12.2019(AnnexureP-2).

Learned counsel for respondents No.2 to 4 has admitted the factum of compromise. On 06.02.2020, this Court after issuance of notice of motion had, directed the petitioner, as also respondent Nos.2 to 4 to appear before the Area Magistrate/trial Court (as the case may be) to get recorded their statements and trial Court would satisfy itself about the authenticity of the compromise and the fact that it has been arrived at without any kind of undue influence or pressure, and would thereafter send its report to this Court, before the next date of hearing.

In pursuance of the said order, the report forwarded vide letter no.581 dt.28.02.2020 has been submitted by the Judicial Magistrate Ist Class, Sri Muktsar Sahib, which is on record. The relevant part of the report is reproduced hereinbelow:-

"It is respectfully submitted that as per statements got recorded by the parties and ASI Rajbir Singh in FIR No.74 dated 26.09.2019, under Sections 323, 341, 34 of IPC, 3(1)x SC Act, Police Station Bariwala District Sri Muktsar Sahib there are three accused persons. As per statement got recorded by the Investigating Officer no criminal proceeding are pending against any person nor anybody is declared Prolaimed Offender.

After going through the various statement on record it is clear that both parties have effected compromise. The undersigned is of the view that the compromise is genuine, voluntary and without any coercion or undue influence. The report along with statements as directed are submitted for your kind perusal please.

*Sd/-
Rajinder Singh Nagpal, PCS
Judicial Magistrate Ist Class,
Sri Muktsar Sahib*

In compliance with the order dated 06.02.2020, an affidavit dated 06.03.2023 has been filed by respondent No.1 i.e State, wherein it is mentioned that the petitioners are accused in the present FIR and challan in this case has not been presented before the Illaqa Magistrate and the matter is at the stage of the

investigation, which is likely to be completed.

A perusal of the said report would show that statements of the concerned persons have been recorded in this case, who have stated that the matter has been compromised and they have no objection in case the FIR in question is quashed. They have further stated that the said compromise is genuine, voluntary, and without any coercion or undue influence.

Learned counsel for the petitioners has submitted that there is no other FIR against the petitioners and they have not been declared as proclaimed offenders and learned State counsel has not disputed this fact.

Having heard the learned counsel for the parties and after perusing the report submitted by the trial Court, this Court finds that the matter has been amicably settled between the petitioners and the complainant, where the case is still under investigation, and by the passage of time, the parties have decided to bury their hatchet and compromise the dispute amicably. Therefore, to prevent the abuse of the process of law and to secure the ends of justice, the criminal proceedings deserves to be quashed, under section 482 of Cr. P.C., which has the magnitude of the inherent jurisdiction of the High Court under it and this Court has the inherent power under Section 482 of Cr.P.C. to quash an F.I.R. even when the offences are non-compoundable, with the driving force being the object of securing ends of justice.

As per the Full Bench judgment of this Court in “**Kulwinder Singh and others Vs State of Punjab**”, 2007 (3) RCR (Criminal) 1052, it is held that:-

“27. 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 the exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No

embargo, be it in the shape of Section 320(9) of the Criminal Procedure Code, or any other such curtailment, can whittle down the power under Section 482 of the Criminal Procedure Code.

28. *The compromise, in modern society, is the sine qua non of harmony and orderly behavior. It is the soul of justice and if the power under Section 482 of the Criminal Procedure Code is used to enhance such a compromise which, in turn, enhances social amity and reduces friction, then it truly is the "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 Criminal Procedure Code 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.*

29. *The only inevitable conclusion from the above discussion is that there is no statutory bar under the Criminal Procedure Code 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 if the Criminal Procedure Code, in order to prevent the abuse of law and to secure the ends of justice.*

30. *The power under Section 482 of the Criminal Procedure Code is to be exercised Ex-Debitia Justitia to prevent abuse of the process of Court. There can neither be an exhaustive list nor the defined parameters 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 Criminal Procedure Code has no limits and the Court is a vital and extraordinary effective instrument to maintain and control social order and play a 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 endeavor to give full effect to the same unless a such compromise is abhorrent to the lawful composition of the society or would promote savagery."*

Hon'ble the Apex Court in the case of "Gian Singh Vs. State of

Punjab and another”, 2012 (4) RCR (Criminal) 543, had also observed:-

“57. 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 exercising of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offenses 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 a 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 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

The aforesaid quoted percept has also been followed in ***State of Madhya Pradesh v/s Lakshmi Narayan (2019)5 SCC 688:-***

“xxx...xxx

29.7. While deciding whether to exercise its power under section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed.

xxx....xxx”

The view taken by this Court also finds support from the recent judgment of the Hon’ble Supreme Court in ***Ram Gopal & Anr- V/s State of Madhya Pradesh , 2021(4) RCR (Criminal) 322***, relevant of which is as under:-

“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 extra-ordinary 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.”

Further the Hon’ble Supreme Court in the case of ***Ramawatar V/s State of Madhya Pradesh, 2021(3) ALT (CrI.) 504***, where the issue of quashing of FIR under SC/ST Act, 1889, Section 3(1) (x) has been dealt with and relevant

of which is as under:-

“13. Still further, the Hon’ble Apex Court in Ramawatar v. State of Madhya Pradesh 2021(4) RCR (Criminal) 555, considered the following question:

“whether the power to quash proceedings can be extended to offences arising out of special statutes such as the SC/ST Act?”

14. While answering the above-said question, the Hon’ble Apex Court quashed the criminal proceedings and also set aside the judgments of conviction and sentence passed by the Trial Court as well as the High Court of Madhya Pradesh, by observing as under:-

“15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper castes. The Courts have to be mindful of the fact that the Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution with a twin fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a ‘special statute’ would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr.P.C..”

15. Having appraised the afore-stated para-meters and weighing upon the peculiar facts and circumstances of the instant case, this Court is inclined to invoke powers under Section 482 Cr.P.C. to quash the criminal proceedings for the following reasons:

i. In the present case, a perusal of the FIR in question would manifest that there was a pre-existing civil dispute between the parties. Thus, the genesis of the alleged occurrence was the afore-stated civil/property dispute. Considering this aspect, even though the provisions of a special statute have been invoked in the present case; however this Court is of the prima facie opinion that the

alleged occurrence appears to be private in nature, having only subtle undertones of criminality.

ii. The alleged offence in question does not appear to exhibit the mental depravity of the petitioners.

iii. The alleged occurrence dates back to January, 2018. There is nothing on record to indicate that either before or after the purported compromise, any untoward incident had transpired between the parties.

iv. The complaint is not likely to support the case of the prosecution and continuation of the proceedings is likely to be a waste of judicial time.

v. The object of law is well served when the parties resolve their differences and chose to peacefully co-exist and live in harmony.

vi. The grievances having been resolved, no interest of justice would be served by forcing the petitioner to undergo rigorous of criminal proceedings.

vii. Since the petitioner and the complaint are residents of the same area/town, the quashing of criminal proceedings will advance peace, harmony and fellowship amongst the parties who have decided to forget and forgive any ill-will and have no vengeance against each other; and continuation of the proceedings is not likely to advance any interest of justice.

viii. The cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the petitioner.”

Therefore, the very purpose behind Section 3(1)(x) of the SC/ST is to deter caste-based insults and intimidation when they are used with the intention of demeaning a victim on account of he/she belonging to the Scheduled Caste/Scheduled Tribe community. In the present case, on the fateful day of the occurrence at about 8 o'clock in the morning, the complainant had gone to throw garbage in Panchayat Ghar, then petitioner No.1 told the complainant not to throw garbage over there. After which, the complainant called her son and the accused attacked him with an uneven club by striking a blow on his head, they also put their hands around his neck and further gave an iron rod blow on his head. Considering the peculiar facts of the present case it would not be incorrect to categorize the occurrence as one being overwhelmingly private in nature, having only subtle undertones of criminality, even though the provisions of a special statute have been attracted in the present case.

In view of the report of Judicial Magistrate First Class, Sri Muktsar Sahib, the compromise dated 11.12.2019 and the principles laid down in conspectus of aforesaid judicial precedents and the observations made above, no useful purpose would be served by continuing the proceedings. Therefore, this petition is allowed and FIR No.74 dated 26.09.2019, under Sections 323, 341, 34 of the Indian Penal Code and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, at Police Station Bariwala, District Sri Muktsar Sahib and all the subsequent proceedings emanating therefrom *are hereby quashed*, qua the petitioners only.

27.04.2023
Nisha

(DEEPAK MANCHANDA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>