

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3851-SB-2013 (O&M)

Date of Decision: 31.01.2023

Ram Niwas & Ors.

... Appellants

VS.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. MS Kathuria, Advocate for the appellants

Mr. Ashok Kumar Sehrawat, DAG Haryana

Sandeep Moudgil, J.

(1) This criminal appeal has been directed against the judgment of conviction dated 16.10.2013 and order of sentence dated 17.10.2013 passed by Addl. Sessions Judge, Bhiwani vide which the appellants have been convicted under Sections 148/307/323/452/149 IPC and sentenced to undergo RI for a period of one year under Section 148, for a period of 7 years and to pay fine of Rs.10,000/- each under Section 307/149 IPC, for a period of 6 months under Sections 323/149 IPC and for a period of 3 years with fine of Rs.1000/- each, in case FIR No.180 dated 25.04.2010 under Sections 148/149/307/323/325/506 IPC, registered at Police Station Sadar Bhiwani.

(2) The present appeal filed by the appellants was admitted and recovery of fine was ordered to be stayed vide order dated 13.11.2013. Thereafter, since the Criminal Appeal No.D-210-DB-2014 and CRR-354-2014 were dismissed as not pressed, a Division Bench of this Court, vide order dated 19.03.2014, ordered that the appeal be listed for hearing before the learned Single Judge. A perusal of the case file suggests that the sentences of all the appellants stand suspended by this Court on different dates.

(3) The appellants filed an application i.e. CRM-9834-2019 praying for compounding of the offence on the basis of subsequent compromise dated 12.02.2019 entered into between the parties.

(4) Since the parties have compromised the matter, this Court vide order dated 22.11.2022, directed the parties to appear before the Illaqa Magistrate/Trial Court and for report with regard to the genuineness of the compromise.

(5) The report dated 15.12.2022 has been received from learned JMIC, Bhiwani stating that the parties have entered into a compromise without any undue influence or pressure.

(6) Though the parties have entered into a compromise, the moot question for examination by this Court is still to consider as to whether the instant FIR be quashed, which involves the offence under Section 307 IPC as well since it is a non-compoundable offence as per Section 320 of the CrPC.

(7) In the matter of Narinder Singh vs. State of Punjab, Single Bench of this Court refused to accept the compromise between the parties in FIR registered for offences punishable u/s 307/324/323/34 IPC and dismissed the petition seeking quashing of the FIR. The appeal was allowed by the Supreme Court (reported as **2014(6) SCC 466**) laying down the certain 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.

(I) 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.

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(VII) 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. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a

ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

(8) In another case of **State of Rajasthan vs. Shambhu Kewat and another, 2014(4) SCC 149** while dealing with the case of persons acquitted of offences punishable u/s 307,323, 325, 427 r/w Section 34 IPC, the Apex Court found that High Court erred in acquitting the accused and reversing the order of conviction merely on the basis of compromise and that offence under Section 307 cannot be said to be crime against an individual but against society. The Apex Court held that:-

“...criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 Indian Penal Code is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one...”

(9) Apparently, there being a conflict in two decision of the Supreme Court i.e. **Narinder Singh's** case (supra) vis-à-vis **Shambhu Kewat's** case

(supra), the matter was referred to the Larger Bench which was finally answered by a three Judges Bench in **State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688**. As regards the offences under Section 307 IPC, which is relevant in the present context, the Apex Court held that:-

*iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of **Narinder Singh** (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;*

v) while exercising the power under [Section 482](#) of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

(10) The question “whether compromise between the parties can be considered even after conviction in exercise of the power under Section 482 Cr.P.C. where the offence is non-compoundable” arose before the Apex Court in **Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322**. The Supreme Court, after considering a catena of decisions including those rendered in **Narinder Singh** (supra) and in **Laxmi Narayan** (supra) held that:-

“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 extra-ordinary 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...”

“14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

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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.”

(11) Somewhat similar question cropped up before the Division Bench of this Court in **Sube Singh vs. State of Haryana and another, CRM No. 38140-M of 2011 (O&M)** decided on 9.4.2013. The Division Bench set aside the judgment and order of conviction passed in Criminal Case, on the basis of compromise arrived at between them and their step-mother on the ground that the refusal to invoke power under Section 320 Cr.P.C., 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 and 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. 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.

(12) A Coordinate bench of this Court in **'Jagroop Singh and others vs. State of Punjab and others' 2017 (1) Law Herald 826** also dealt with the above proposition and laid down certain guiding principle while dealing with cases pertaining to offences under Section 307 IPC and held that:-

“In case of quashing of criminal prosecution arising out of offence under Section 307 IPC, following facts are necessary to be considered for arriving at the conclusion i.e.:-

(i) Whether offence would remain an offence against State/society or it can be diluted, if weapon used is not deadly weapon,

(ii) Place where occurrence took place is not publicly exposed so as to exhibit action in open on before the society.

(iii) Medical opinion is such that it aggravated with the passage of time and ultimately brought the offence within the fold of 307 IPC, and

(iv) the offence is the outcome of any matrimonial discord between the parties.”

(13) Though the injuries suffered by the injured have been opined to be dangerous to life in nature but it is matter of record that no dangerous weapon has been used in causing those injuries which does show that it is not a case of mental depravity or the one which can be perceived as threat to public peace. Incident took place in 2010 and the parties have now moved ahead. No such incident is reported to have occurred during the past 13 years. The parties have decided to forget and forgive. It has been repeatedly held by the Apex Court as well as by this Court that wherever the parties decide to bury the hatchet and are ready to reconcile their differences, the same needs to be promoted and the same shall be in the interest of justice until the same is found to be prejudicial to the interest of public at large or to the administration of justice.

(14) Keeping in view the aforesaid facts and in view of the law laid down by the Apex Court and this Court, the compromise/settlement between the parties is accepted. FIR No.180 dated 25.04.2010 under Sections 148/149/307/323/325/506 IPC, registered at Police Station Sadar Bhiwani is ordered to be quashed along with all subsequent proceedings including the judgment/order passed by the Trial court dated 16/17.10.2013 which too is

ordered to be set aside and accordingly, the appellants stand acquitted of all the charges qua the aforesaid FIR.

- (15) Ordered accordingly.
- (16) The present petition is, therefore, allowed.
- (17) Needless to say that the parties shall remain bound by the terms of compromise and their statements made before the Court below.

31.01.2023
V.Vishal

(Sandeep Moudgil)
Judge

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |