

CRM-M-10768 of 2023

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

CRM-M-10768 of 2023
Reserved on: 29.05.2023
Pronounced on: 06.07.2023

Mohammad Faisal and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Abhinav Jain, Advocate,
for the petitioners.
Mr. Anup Singh, AAG, Punjab.
Mr. Arnav Kumar, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.0143 dated 11.09.2022 under Sections 307, 120-B IPC, registered at Police Station Sadar Faridkot and subsequent proceedings arising therefrom on the basis of compromise by way of affidavit dated 29.09.2022 (Annexure P-2) of respondent No.2-complainant.

2. Present FIR was registered on the statement of Kala son of Matloob son of Rashid, resident of Bajhedi, District Mujafar Nagar (U.P), at present village Chahal, Tehsil and District Faridkot, stating that he is resident of above mentioned address. He used to take care of livestock of petitioner No.1-Mohammad Faisal son of Mehboob, resident of Bajhedi, District Mujafar Nagar (U.P), at present village Chahal. For the last 4-5 months, petitioner No.1-Mohammad Faisal has

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not paid his salary to him. He often abused and maltreated him when he demanded his money and compelled him to quit the job. On 28.08.2022, truck of petitioner No.1-Mohammad Faisal, being driven by Yaseen driver, was loaded with livestock for U.P. Petitioner No.1-Mohammad Faisal and Usaaf were sitting in the tool of the truck and he along with Tanjeem son of Jalim was sitting in the cabin of the truck. When the truck reached at some distance, petitioner No.1-Mohammad Faisal called respondent No.1-complainant to come up as they have to settle the livestock. He while moving slowly on the running truck, was to ascend up on the truck from ladder and when he reached near the tool, petitioner No.1-Mohammad Faisal and petitioner No.2-Usaaf with the intention to kill, gave him severe push and he fell on the road. He suffered injury on his head and the passersby got him admitted at DMC Ludhiana.

3. Learned counsel for the petitioner has contended that dispute between the petitioners and respondent No.2 arose due to some misunderstanding. He further submitted that now the matter has been compromised between petitioners and respondent No.2 vide compromise dated 29.09.2022 (Annexure P-2) and challan has not been presented as yet. He further submitted that as per compromise, respondent No.2 will not pursue present case and has no objection in quashing the FIR in question.

4. Notice of motion was issued on 01.03.2023 and in pursuance thereof, learned State counsel has filed the reply which is taken on record and he has opposed the prayer made in the petition by

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submitting that there are specific and grave allegations against the petitioners and injuries suffered by respondent No.2 have been declared dangerous to life. Therefore, no ground is made out to quash the present FIR against the petitioners.

5. I have heard learned counsel for the parties and perused the record.

6. Before proceeding further in the matter, it shall be appropriate to refer to compromise (Annexure P-2) as per which, the reason for compromise is that due to compromise, enmity between them would be ended and would impact the surroundings in good manner.

7. A perusal of the contents of the compromise would reveal that they entered into a compromise to live in harmony. However, without the background of friendship, the closeness of family, strong bonds or being in relations, this explanation is meaningless to permit compounding of a heinous offence punishable under Section 307 IPC, where the sentence can run to imprisonment for life.

8. The relevant portion of medico legal report dated 09.05.2023 is reproduced as under:-

Particulars of injuries/symptoms in case of poisoning: As per record, there are no visible injury marks on patient's body. However, as per NCCT Head Report (dated 29.08.2022) injuries: (1). There is fracture of squamous part of right temporal bone. (2). SDH, measuring 2.6 mm in right temporal region. (3). Multiple Hemorrhage contusions in right fronto temporal and left basal frontal region.

<i>Nature of injuries (simple,</i>	<i>The kind of weapon used or poison</i>
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<i>grievous or dangerous)</i>	<i>suspected in case of poisoning</i>
<i>Dangerous to life</i>	<i>Blunt Weapon</i>

9. In ***Girija Shankar v. State of U.P., 2004(1) R.C.R.(Criminal) 839*** the Hon'ble Supreme Court has held that to justify conviction under Section 307 IPC it is not essential that bodily injury capable of causing death should have been inflicted rather the Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307 IPC.

10. Hon'ble Supreme Court in ***Narinder Singh and others v. State of Punjab and another, 2014(2) R.C.R.(Criminal) 482*** has laid down the guidelines with regard to the cases in which the cases the compromise should be accepted and the cases wherein the compromise be not accepted. The relevant portion from the said judgment reads as under: -

31. 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 :

(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

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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.

(II) 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.

(III) Such a power is not 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 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.

(IV) 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.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

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*(VI) Offences under Section 307 I.P.C. would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 I.P.C. 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 I.P.C. is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 I.P.C. **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. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak.** In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.*

(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

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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 I.P.C. 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 I.P.C. 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.”

11. In ***State of Rajasthan v. Shambhu Kewat, (2014) 4 SCC 149***, Hon’ble Supreme Court has held as under: -

“(14) We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in Gian Singh ,

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and has committed a mistake in taking the view that, the injuries were caused on the body of Abdul Rashid in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in Gian Singh that the Court, while exercising the power under Section 482, must have "due regard to the nature and gravity of the crime" and "the societal impact". Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against "an individual", rather than against "the society at large".

(15) We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. 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 IPC 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 and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present,

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will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

(16) We are, therefore, inclined to allow this appeal and set aside the judgment of the High Court. The High Court was carried away by the settlement and has not examined the matter on merits, hence, we are inclined to direct the High Court to take back the appeal to its file and decide the appeal on merits.”

12. Hon’ble Supreme Court in ***State of Madhya Pradesh v. Laxmi Narayan and others, 2019(2) R.C.R.(Criminal) 255*** has held as under: -

“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

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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;”

13. There are specific allegations against the petitioners that with an intention to kill him, they pushed the complainant from the moving truck and he fell down, as a result of which complainant received injuries on his head, which, as per medical report (Annexure R-1), have been declared dangerous to life. Present case falls under the category of heinous and serious offence and is a crime against the society at large. The contents of the compromise deed and its objectives point towards the rejection of the petition, in view of the law laid down by the Hon’ble Supreme Court in the above mentioned judicial precedents, accordingly no ground is made out to quash the FIR in question on the basis of compromise arrived at between the parties.

14. Dismissed.

06.07.2023
R.S.

(NAMIT KUMAR)
JUDGE

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