

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

CRM-M-10143-2021

Date of decision: 27.04.2023

Kamaldeep Singh @ Kanwaldeep Singh and anotherPetitioners

versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Sidhu, Advocate
for the petitioners.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Arshpreet Khadial, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J. (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of FIR No.3, dated 06.01.2020 (Annexure P-1), under Sections 307/452/336/34 of the IPC and Sections 25, 27 of the Arms Act, registered at Police Station Sadar Bathinda, District Bathinda, with all subsequent proceedings emanating therefrom, on the basis of compromise dated 11.02.2021 (Annexure P-2).

During the pendency of the dispute, the parties have compromised the matter and filed the present petition for quashing of FIR.

Vide order dated 24.03.2023, parties were directed to appear before the Illaqa Magistrate/Trial Court for recording of their statements and for awaiting report with regard to the genuineness of the compromise.

The report dated 19.04.2023 has been received from learned Judicial Magistrate 1st Class, Bathinda, stating that the parties have entered into a compromise voluntarily without any pressure, threat or coercion.

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 non-compoundable as per Section 320 of the Cr.P.C., 1973.

The Larger Bench of the Hon'ble Supreme Court in 'State of Madhya Pradesh versus Laxmi Narayan and others', 2019 (5) SCC 688, considering such eventualities after examining catena of decisions on the issue and summarizing the propositions as under:-

"(1) section 482 CrPC, 1973 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.

(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 CrPC, 1973. The power to quash under Section 482 is attracted even if the offence is noncompoundable.

(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.

(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.

(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 formulate.

(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.

(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 insofar as the exercise of the inherent power to quash is concerned.

(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.

(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

(10) There is yet an exception to the principle set out in Propositions (8) and (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."

Thereafter, it was observed and held as under:-

"i) that the power conferred under section 482 of the Code to quash the criminal proceedings for the noncompoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved 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.

iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) 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."

Now, the instant petition is to be tested within the fore-corners of the above laid down principles in State of *Madhya Pradesh (supra)* and for that a brief glance to the facts is must.

On bare perusal of FIR, offence under Section 307 of IPC is not made out and to make out the case of said offence, the intention to kill, plays the crucial role, which is indubitably missing. As per FIR, petitioner No.1 has allegedly caused one gun shot injury, that too, on the left leg below the knee,

which is not a vital part of the body, which has been declared grievous in nature and in any case, dangerous to life to invoke Section 307 of IPC.

In all eventualities once the parties have entered into a compromise, wherein the trial is at the initial stage as no witness so far has been examined by the prosecution, the accused are in all probabilities likely to be acquitted and the whole trial proceedings, if allowed to continue will be a futile exercise, as has been held by this Court in 'Kulwinder Singh and others versus State of Punjab', 2007(3) RCR (Criminal) 1052, the power under Section 482 Cr.P.C., is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. Though, the powers vested therein are unfettered but shall be exercised sparingly with utmost care and caution since the Court is a vital and an extraordinary effective instrument to maintain and control social order.

Applying the aforesaid formula to the present case would definitely lead to an ever lasting peace and harmony not only among the two parties but in the locality as a whole and therefore, in view of the amicable resolution of the issues amongst the parties, no useful purpose would be served by continuation of the proceedings.

Having heard learned counsel for the parties and on scientific and mechanical examination of the material, this Court has convincingly reached to the conclusion that FIR No.3, dated 06.01.2020 (Annexure P-1), under Sections 307/452/336/34 of the IPC and Sections 25, 27 of the Arms Act, registered at Police Station Sadar Bathinda, District Bathinda, with all subsequent proceedings arising therefrom deserves to be quashed *qua* the petitioners in view of compromise (Annexure P-2).

Accordingly, the present petition is, therefore, allowed.

27.04.2023

Neha

(SANDEEP MOUDGIL)
JUDGE

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