

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2023:PHHC:050781

(238)

CRM-M-13582-2022

Date of Decision: 29.03.2023

Buta Singh @ Boota Singh & others

--Petitioners

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Ms. Promila Nain, Advocate for the petitioners.

Mr. Karunesh Kaushal, A.A.G., Punjab.

Mr. A.A. Pathak, Advocate for respondents no.2 & 3.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.271 dated 17.8.2006 under Sections 324, 323, 148, 149 IPC registered at Police Station, Jagraon, District Ludhiana along with all the subsequent proceedings arising therefrom on the basis of compromise dated 22.10.2012 (Annexure P-2).

FIR in question was got registered by complainant-respondent No.2-Kewal Singh, wherein it was alleged that on 15.8.2006 at about 11'O clock in the night while he was going to his farm, he saw the stray cattle had damaged his crops. When he was returning and reached near the gate of Karnail Singh then Karnail Singh and Jarnail Singh both brothers gave Lalkara to him and said that Kewal Singh should not be allowed to go scot free. They opened attacked on him and his brother Buta Singh tried to save him. Kewal Singh and his brother suffered injuries. On their raising noise the accused persons escaped from the spot. On the basis of the statement made FIR in question was lodged.

On 17.8.2006 ASI Mohan Dass along with police officials reached Civil Hospital and recorded statement of Kewal Singh. The cross-version to the FIR was also recorded, wherein the allegations of beating were levelled against Kewal Singh, Sukhwinder Singh, Hardeep Singh etc. On the registration of version and cross-version the investigation commenced, however, during investigation both the parties entered into a compromise. On completion of investigation challan was presented against 6 accused where the petitioners namely Buta Singh, Sukhwinder Singh and Harvinder Singh were shown to be Proclaimed Offenders and the trial was concluded qua rest of the 3 accused persons namely Kewal Singh, Gurvinder Singh and Hardeep Singh. Learned Trial Court vide order dated 3.11.2012 acquitted three accused persons.

Learned counsel for the petitioners vehemently contends that though the case pertains to a version and cross-version, however, after registration of the FIR both the sides with the intervention of respectables, arrived at settlement and they resolved their inter se dispute, which is apparent from the compromise. It is submitted that as there was a compromise between both the sides, petitioners were not aware about the pendency of this case and they went abroad. She submits that thereafter trial commenced qua rest of the three accused and on the basis of the compromise arrived those three accused were acquitted by the Trial Court vide order dated 3.11.2012. She further submits that the complainant-eye witnesses have been examined as PW-2 and PW-3 and they did not support the case of the prosecution and thus were declared hostile. It is further submitted that complainant Kewal Singh was examined as PW-2 and after his deposition he has died. Counsel submits that once the parties have

already entered into compromise and injured eye witnesses have also not supported the case of prosecution and on the basis of the same co-accused have been acquitted by the Trial Court, then prosecution of the petitioners in the present case would be nothing but an abuse of the process of law. It is further submitted that as the parties had entered into compromise the petitioners bonafide believed that the case was over and they went abroad and they were wrongly declared Proclaimed Offender. She submits that even if the petitioners have been declared Proclaimed Offender their prosecution would be nothing but an abuse of the process of law. She has relied upon the judicial precedent in case of ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011(2) RCR (Criminal) 453***. She submits that the FIR in question and all the subsequent proceedings arising therefrom may be quashed in the interest of justice.

Learned State counsel submits that this is a case of version and cross-version and was duly investigated. He submits that as the petitioners left the country during the pendency of the case, they were declared Proclaimed Offender, however, he has fairly stated that the co-accused were tried and acquitted by the learned Trial Court as the parties had compromised the matter and they did not support the case of prosecution.

Learned counsel for the complainant has very fairly admitted that the parties have compromised the matter and as such he has no objection if the present petition is allowed. He also admits that Kewal Singh complainant has died during the pendency of this petition.

I have heard learned counsel for the parties at length and perused the record carefully.

A Division Bench of this court in ***Sudo Mandal @ Diwarak***

Mandal's case (supra) has held as under:-

“23. We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as proclaimed offenders. They had not faced the trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows :-

“Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice”.

24. The above provisions recognise the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would

ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and ordered to face the trial in this case.”

A bare perusal of statutory provision of the 482 Cr.P.C. would show that the High Court may make such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 320 Cr.P.C. is equally relevant for consideration, which prescribes the procedure for compounding of the offences under the Indian Penal Code.

Keeping in view the nature of offences allegedly committed and the fact that both the parties have amicably settled their dispute, the continuation of criminal prosecution would be a futile exercise. The Hon'ble Supreme Court in a number of cases including ***Narinder Singh and others Versus State of Punjab and another, 2014 (6) SCC 466***; ***B.S.Joshi and others vs State of Haryana and another (2003) 4 Supreme Court Cases 675*** followed by this Court in Full Bench case of ***Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR 1052*** have dealt with the proposition involved in the present case and settled the law.

Thereafter, Hon'ble Supreme Court in ***Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303*** further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in ***State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335***.

Para 61 of the judgment reads as under:-

“61. 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 exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences 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 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 a 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, the High Court may quash criminal proceedings if in its view, because

of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Applying the law settled by Hon'ble Supreme Court in plethora of judgments and this High Court, it is apparent that when the parties have entered into a compromise, then continuation of the proceedings would be merely an abuse of process of the Court and by allowing and accepting the prayer of the petitioners by quashing the FIR would be securing the ends of justice, which is primarily the object of the legislature enacting under Section 482 Cr.P.C.

As a result, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and hence, FIR No.271 dated 17.8.2006 under Sections 324, 323, 148, 149 IPC registered at Police Station, Jagraon, District Ludhiana and all the subsequent proceedings arising therefrom are quashed qua the petitioners on the basis of the compromise. Needless to say that the parties shall remain

bound by the terms and conditions of the compromise and their statements recorded before the court below.

Petition stands allowed.

(RAJESH BHARDWAJ)
JUDGE

29.03.2023

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