

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

CRM-M-19129 of 2023

Reserved on 25.08.2023

Pronounced on :29.08.2023

Balbir Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Ms. Simsi Dhir Malhotra, Advocate, for
Mr. Dhir Malhotra, Advocate for the petitioners.

Mr. Randeep Singh Khaira, DAG, Punjab.

Ms. Ekta Thakur, Advocate for respondent No.2.

DEEPAK GUPTA, J.

Prayer in this petition is to quash FIR No.31 dated 29.01.2022 registered at Police Station Division No.6, District Police Commissionerate Ludhiana, under Sections 306 / 34 IPC, on the basis of compromise dated 14.12.2022 (Annexure P4).

2. Pursuant to the order dated 21.04.2023, parties appeared before the trial Court and got their statements recorded, affirming the compromise. Report dated 24.05.2023 of learned Addl. District & Sessions Judge, Ludhiana, has been received, as per which statement of the affected persons and the joint statement of the petitioners – accused have been recorded and that the compromise is with free will, as parties want to live in peace and harmony to avoid any future conflict.

3. However, learned State Counsel has opposed the prayer to quash the FIR on the basis of compromise by submitting that offence under Section 306 IPC is a heinous crime and quashing on the basis of compromise for such an offence cannot be allowed. He has relied upon ***Daxaben Vs. State of Gujarat and others, 2022(3) Crimes 224***, wherein accused was the wife of the deceased and her prosecution was sought for committing offence under Section 306 IPC. It was held by Hon'ble Supreme Court that FIR under Section 306 IPC cannot be quashed on the basis of any financial settlement with informant, surviving spouse, parents, children, guardians, care-givers or anyone else.

4. On the other hand, learned counsel for the petitioners have referred to following authorities to contend that various co-ordinate Benches of this Court have allowed the quashing of FIR under Section 306 IPC on the basis of compromise;

(a) Satish Kumar Bhargav and others Vs. State of Punjab and another, 2018(2) R.C.R. (Criminal) 103;

(b) Varinder Kumar @ Bitra and others Vs. State of Punjab and another – CRM-M-13053 of 2017 (O&M) decided on 22.08.2019;

(c) Amar Nath Vs. State of Punjab and another – CRM-M-12158 of 2018 decided on 09.05.2019;

(d) Nirmaljit Singh and others Vs. State of Punjab and Another –

CRM-M-50641 of 2021 (O&M), decided on 10.04.2023.

5. Considered the submissions of counsel for all the sides and perused the record.

6. The limits of the inherent power granted to the High Courts under Section 482 Cr.P.C has been defined by Hon'ble Supreme Court from time to time in catena of authorities. In ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736***, while discussing the scope of Section 202 and 204 of the Code of Criminal Procedure, Hon'ble Supreme Court laid down the guidelines and the grounds on which proceedings could be quashed under Section 482 Cr.P.C, by observing as follows: -

“(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally

competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

7. Taking similar view, it has been held in ***Sharda Prasad Sinha Vs. State of Bihar, (1977) 1 SCC 505***, as under: -

“It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 to quash the order passed by the Magistrate taking cognizance of the offence.

10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”

8. In ***Kapil Agarwal & Ors. v. Sanjay Sharma & Others, (2021) 5 SCC 524***, Hon’ble Apex Court observed that Section 482 of the Cr.P.C. is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to degenerate into weapons of harassment.

9. Offence under Section 306 of the IPC of abetment to commit suicide is a grave and non-compoundable offence. The inherent power of the High Court under Section 482 of the Cr.P.C. is wide and can even be exercised to quash criminal proceedings relating to non-compoundable

offences, to secure the ends of justice or to prevent abuse of the process of Court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 of the CrPC to quash the criminal proceedings.

In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case.

10. In *State of Madhya Pradesh v. Laxmi Narayan & Ors.*, (2019) 5 SCC 688, a three-Judge Bench of Hon'ble Supreme Court discussed the earlier judgments of the Court and laid down the following principles: -

“15. Considering the law on the point and the other decisions of this Court on the point, referred to herein above, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable 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;

15.2. 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;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;

15.4. 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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in Narinder Singh

[(2014) 6 SCC 466: (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated herein above;

15.5. 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.”

11. The above-said legal position would reveal that though inherent power conferred under Section 482 Cr.P.C to quash the criminal proceedings can be exercised even for non-compoundable offences, not covered under Section 320 of the Code but such power should not be exercised in those proceedings, which involve heinous and serious offences of mental depravity i.e., offences like murder, rape, dacoity etc. As such, proceedings arising out of offences which are not private in nature and have a serious impact on the society, should not be allowed to be quashed.

12. In ***Daxaben (supra)***, it has been held by Hon’ble Supreme Court as under: -

“37. Offence under Section 306 of the IPC of abetment to commit suicide is a grave, non-compoundable offence. Of course, the inherent power of the High Court under Section 482 of the Cr.P.C.

is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse of the process of Court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 of the CrPC to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case.”

13. Thus, though offence under Section 306 IPC of abetment to commit suicide is grave and non-compoundable offence but it has been clarified that in what cases, power to quash the FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend upon the facts and circumstances of the case.

14. As held in ***State of Madhya Pradesh V. Laxmi Narayan and others’ case (supra)***, though offence under Section 307 IPC falls in the category of heinous and serious offences and, so, is to be treated as crime against society and not against the individual alone, but still the High Court would not raise its decision merely because there is a mention of Section 307 IPC in the FIR or the charges framed under this provision. It is open to the High Court to examine as to whether the 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.

15. On the same analogy, it is required to be seen by the High Court as to whether Section 306 IPC is even made out from the contents of FIR or not before coming to the conclusion that quashing of proceedings under Section 306 IPC on the basis of compromise should be allowed or not by exercising power under Section 482 Cr.P.C.

16. In the present case, perusal of the FIR (Annexure P1) would reveal that it was lodged on the complaint of Smt. Renu Khurma, as per which her husband Hira Lal Khurma committed suicide on 28.01.2022.

The accused named in the FIR, who were blamed for committing the suicide, are the petitioners. All of them are related to the deceased, inasmuch as accused-petitioners Balbir Kumar and Raghbir Kumar are paternal uncles of the deceased, whereas petitioners Vishal Kumar and Vinod Kumar are the respective sons of petitioners No.1 & 2. As per the allegations, petitioners-accused were occupying ground floor of the residential house of the deceased for the last 25 years and were not vacating the same despite various requests and rather, they were harassing and threatening the deceased. It was further the allegation that deceased Hira Lal Khurma blamed the petitioners for taking the extreme step, as he was fed up with the harassment of the petitioners.

17. The question is as to whether on the basis of above-said vague allegations, Section 306 IPC is made out, as no details whatsoever

are given as to when and in what manner, petitioners harassed the deceased. There is no specific attribution to any of the petitioners. Simply by mentioning in the FIR or even in the suicide note that accused-petitioners are responsible for the commission of suicide by deceased, cannot be sufficient to invoke Section 306 IPC.

18. Section 107 and 306 IPC are relevant her, which read as under: -

“306. Abetment of suicide. -If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“107. Abetment of a thing. - A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by an act or illegal omission, the going of that thing.

Explanation 1. - A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission

thereof, is said to aid the doing of that act.”

19. Hon'ble Supreme Court while dealing with Sections 306 and 107 of the Indian Penal Code in ***Gangula Mohan Reddy Vs. State of Andhra Pradesh, 2010 (2) Cri.L.J. 2110*** held as under: -

*“1. In order to convict a person under Section 306 Indian Penal Code, there has to be a **clear mens rea to commit the offence** - It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.*

*2. **Abetment involves a mental process of instigating** a person or intentionally aiding a person in doing of a thing - Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.*

*3. There should be **intention to provoke, incite or encourage the doing of an act** by the latter - Each person's suicidability pattern is different from the others - Each person has his own idea of self-esteem and self-respect - Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases - Each case has to be decided on the basis of its own facts and circumstances. 2009(4) RCR (Crl.) 196 (SC) relied.”*

20. Further, there should be an allegation of either direct or indirect act of incitement to the commission of offence of suicide. In ***Ude Singh & Others Vs. State of Haryana (2019) 17 SCC 301***, reiterating the earlier decisions, it has been held that **instigation means to goad, urge forward, provoke, incite or encourage** to do an act. If the person who commits suicide had been hypersensitive and the action of accused is

otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. However, on the other hand, if the accused by his act or by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306 IPC.

21. In **S.S. Chheena v. Vijay Kumar Mahajan and Another,** (2010) 12 SCC 190, it has been held by Hon'ble Supreme Court and observed as under: -

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

22. In the case of **State of West Bengal vs. Orilal Jaiswal and Anr.,** (1994) 1 SCC 73, Hon'ble the Supreme Court observed that:

"We may add here that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end

the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

23. In ***Swamy Prahaladdas vs. State of M.P. & Anr., 1995 Supp.***

(3) SCC 438, the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. It was held by Hon'ble Supreme Court that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

24. When the legal position as discussed above for making out an offence under Section 306 IPC is applied to the facts of the present case, it would make out that even prima-facie offence under Section 306 IPC is not made out, as the allegations contained in the FIR against the petitioners are quite vague and general in nature with no specific attribution to anybody. Merely by blaming the petitioners to be responsible for commission of suicide by the deceased, cannot be sufficient to invoke Section 306 IPC.

25. It is interesting to note that although Id. State counsel has opposed the quashing of the FIR on the basis of compromise, but the report under Section 173 Cr.P.C. (Annexure P7) filed by the police before the Court of Id. Area Magistrate would reveal that after investigation, even the investigating agency concluded that there was no evidence of abetment as per Section 107 IPC and therefore, cancellation of the FIR in question was made out. However, challan was being filed before the Court simply because the offenses in question are serious in nature. It is, thus, clear that challan was filed by the police simply because of the nature of allegation, despite coming to the conclusion that ingredients of abetment were not made out.

26. In the aforesaid circumstances, when this Court is not even convinced that offence under Section 306 IPC would prima facie make out, it is felt that there should be no hesitation in quashing the FIR based on compromise amongst the parties.

27. In Vineet Kumar and others vs. State of Uttar Pradesh and others (2017) 13 SCC 369, it was held by Hon'ble Supreme Court as under:-

"23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka vs. L. Muniswamy, (1977) 2

SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

28. In view of entire evaluation of the facts and legal position as above, this Court finds that as allegations set out in the FIR do not constitute the offence under Section 306 IPC, therefore, the petitioners

should not be compelled to undergo the rigmarole and ordeal of trial, particularly when the compromise has been effected between the petitioners and the family members of the deceased and so, quashing of the proceedings would serve the solitary purpose of Section 482 Cr.P.C so as to prevent the abuse of process of the Court.

29. In the similar facts and circumstances, a co-ordinate Bench of this High Court quashed proceedings under Section 306 IPC in CRM-M-50641 of 2021 (O&M) titled “*Nirmaljit Singh and others Vs. State of Punjab and another(supra)*”, after finding that as per the allegations in the FIR, no offence under Section 306 IPC was made out. Similarly, other co-ordinate Benches of this High Court in *Satish Kumar Bhargav and others (supra)*, *Varinder Kumar @ Bitu and others (supra)* and *Amar Nath Vs. State of Punjab and another (supra)*, have allowed the quashing of the FIRs under Section 306 IPC on the basis of compromise.

30. In view of the entire discussion, present petition is accepted. FIR No.31 dated 29.01.2022 registered under Section 306 & 34 IPC at Police Station Division No.6, District Police Commissionerate Ludhiana, and all subsequent proceedings arising therefrom, are hereby quashed on the basis of compromise dated 14.12.2022 (Annexure P4).

29.08.2023

Vivek

(DEEPAK GUPTA)

JUDGE

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