IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-28093-2022 (O&M)
Reserved on: 11.04.2023
Pronounced on: 18.04.2023

Mukhwinder Singh @ Kali

... Petitioner(s)

Versus

State of Punjab & another

…Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Gursewak Singh, Advocate
for the petitioner(s).

Mr. IPS Sabharwal, DAG, Punjab.

Mr. Gursharan Singh, Advocate
for respondent no.2.

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ANOOP CHITKARA, J.

FIR No.	**Dated**	**Police Station**	**Sections**
162	2.12.2021	Division No.1, District Pathankot	323, 324, 326, 379, 506, 148 & 149 IPC

The petitioner, arraigned as accused in the above captioned FIR, has come up before this Court under Section 482 CrPC for quashing of the FIR and all consequential proceedings based on the compromise with the aggrieved person.

2. During the pendency of the trial, the accused and the aggrieved person have compromised the matter, and its copy is annexed with this petition as Annexure P-2.

3. After that, the petitioner came up before this Court to quash the FIR, impleading the aggrieved person as respondent no.2.

4. This court had asked the parties to appear before the concerned court and had asked the said court to give its report as per the format. The report reads as follows:

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Name of the reporting Court	Additional Chief Judicial Magistrate, Pathankot

Criminal Case no. before trial Court	20 of 2023, CIS No.CHI/75/2023

1.	Names of the complainant/ victims(s)/ aggrieved persons(s)	Yuvraj Singh
2.	Dates on which the statement(s) of the complainant/ victims(s)/ aggrieved persons(s) were recorded	17.3.2023
3.	Has the identity of the complainant/ victims(s)/ aggrieved persons(s) been verified?	Yes
4.	Whether all the victims/ all the aggrieved persons have compromised the matter?	Yes
5.	Is there pressure, threat, or coercion upon the victim(s)/aggrieved person(s)/complainant?	No
6.	Names of the accused person(s)	Mukhwinder Singh @ Kali, Shubham @ Billu, Gulshan Kumar, Aman Kumar @ Lucky and Rahul Choudhary @ Choocha.
7.	Dates on which the statement(s) of the accused persons(s) recorded	17.3.2023
8.	Whether all the accused have compromised the matter? If no, then the names of the accused who have compromised.	No. Only Mukhwinder Singh @ Kali has compromised.
9.	Whether proclamation proceedings are pending against any accused?	No
10.	Has the police report been filed or not?	Yes
11.	Notice of accusation /Charges have been framed or not?	No
12.	Sections of statutes invoked in the matter	323, 324, 326, 379, 506, 148 and 149 IPC
13.	Whether the court is satisfied with the genuineness of the compromise?	Yes

ANALYSIS & REASONING:

5. Despite the severe opposition of the State's counsel to this compromise, the following aspects would be relevant to conclude this petition: -

a) The accused and the private respondent have amicably settled the matter between them in terms of the compromise deed and the statements recorded before the concerned Court;

b) A perusal of the documents reveal that the settlement has not been secured through coercion, threats, social boycotts, bribes, or other dubious means;

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c) The aggrieved person has willingly consented to the nullification of criminal proceedings;

d) There is no objection from the private respondent in case present FIR and consequent proceedings are quashed;

e) In the given facts, the occurrence does not affect public peace or tranquillity, moral turpitude or harm the social and moral fabric of the society or involve matters concerning public policy;

f) The rejection of compromise may also lead to ill will. The pendency of trial affects career and happiness;

g) There is nothing on the record to prima facie consider the accused as an unscrupulous, incorrigible, or professional offender;

h) The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family, community, and society;

i) The exercise of the inherent power for quashing FIR and all consequential proceedings is justified to secure the ends of justice.

6. The injured/complainant and accused-petitioner had appeared before the Court of ACJM, Pathankot and had stated that they had entered into a compromise. The parties belong to the nearby villages and must be living there for generations and might continue to live, but who knows for how long. In the closely-knit village community, when the parties have buried their hatchets, the continuation of criminal proceedings will not advance the reformative purposes of jurisprudence just for the sake of deterrence.

7. In the present case, the offences under sections 326, 324, 379, 148, & 149 of Indian Penal Code, 1860 (IPC) are not compoundable under Section 320 of Code of Criminal Procedure, 1973 (CrPC). However, in the facts and circumstances peculiar to this case, the prosecution qua the non-compoundable offences can be closed by quashing the FIR and consequent proceedings.

8. In Y. Suresh Babu v State of A.P., (2005) 1 SCC 347, Hon'ble Supreme Court, while dealing with section 326 of IPC, which was non-compoundable offence, permitted the parties to compound the offence.

9. In Yogendra Yadav v State of Jharkhand, 21.7.2014, Supreme Court holds,

> [4]. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab, 2012(4) R.C.R.(Criminal) 543 : 2012(4) Recent Apex

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> Judgments (R.A.J.) 549 : (2012)10 SCC 303). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

10. In Shiji @ Pappu v. Radhika, (2011) 10 SCC 705, Hon'ble Supreme Court holds,

> [13]. It is manifest that simply because an offence is not compoundable under Section 320 Indian Penal Code is by itself no reason for the High Court to refuse exercise of its power under Section 482 Criminal Procedure Code That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Criminal Procedure Code on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Criminal Procedure Code are not for that purpose controlled by Section 320 Criminal Procedure Code Having said so, we must hasten to add that the plenitude of the power under Section 482 Criminal Procedure Code by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and

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> only in cases where refusal to exercise that power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

11. In Parbatbhai Aahir v State of Gujarat*, (2017) 9 SCC 641*, a three Judges Bench of Hon'ble Supreme Court, laid down the broad principles for quashing of FIR, which are reproduced as follows: -

> [16]. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions:
> 16 (i) Section 482 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;
> 16 (ii) 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 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
> 16 (iii) 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;
> 16 (iv) 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;
> 16 (v) 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 formulated;
> 16 (vi) 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;
> 16 (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant

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> element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;
> 16 (viii) 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;
> 16 (ix) 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
> 16 (x) There is yet an exception to the principle set out in propositions (viii) and (ix) 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.

12. In Ramgopal v. The State of Madhya Pradesh, *Cr.A 1489 of 2012*, decided on 29.09.2021, Hon'ble Supreme Court holds,

> [11]. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.
> [12]. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.
> [13]. It appears to us those criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that

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> 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 postconviction, 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 extraordinary power under Section 482 Cr.P.C. 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. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh &Ors. vs. State of Punjab &Ors. [(2014) 6 SCC 466, 29], and Laxmi Narayan [(2019) 5 SCC 688, 15]*.
>
> [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 between 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."

13. In Shakuntala Sawhney v Kaushalya Sawhney, *(1979) 3 SCR 639*, at P 642, Hon'ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

14. In the light of the judicial precedents referred to above, given the terms of compromise, placement of parties, and other factors peculiar to the case, the contents of the compromise deed and its objectives point towards its acceptance.

15. In Himachal Pradesh Cricket Association v State of Himachal Pradesh, *2018 (4) Crimes 324*, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stand vitiated."

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16. Considering the entire facts, compromise, and in the light of the above-mentioned judicial precedents, I believe that continuing these proceedings will not suffice any fruitful purpose whatsoever.

17. **Given the nature of allegations and the other circumstances peculiar to this case, the petitioner/accused shall surrender all weapons, firearms, ammunition, if any, and the arms license to the concerned authority within thirty days from today and inform the concerned SHO about the compliance.** However, if the police chief of the concerned district, (S.P./S.S.P/Commissioner), gives written permission by passing a reasoned order to arrive at such a decision to retain the firearms and license and in that case, this condition shall not be applicable. If the petitioner does not have such licence, then no such permission should be granted to acquire firearms and ammunition. However, if the police chief of the concerned district (S.P./S.S.P/Commissioner) gives written permission through a reasoned order to get the firearms and license, then this condition shall not be applicable.

18. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the FIR and all subsequent proceedings qua the petitioner(s) only. The bail bonds of the petitioner are accordingly discharged. All pending application(s), if any, stand closed.

Petition allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

April 18, 2023
AK

Whether speaking/reasoned : Yes
Whether reportable : No

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