

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

CRM-M-52099-2018

Date of decision: 27.04.2023

Gurtej Singh and others

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Sukhpreet Kaur, Advocate
for the petitioners.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Jasinder S. Sekhon, Advocate
for respondents No.2 to 4.

SANDEEP MOUDGIL, J. (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of FIR No.0239, dated 20.09.2018 under Sections 306/34 of the Indian Penal Code, 1860 registered at Police Station Civil Lines, Patiala, District Patiala (Annexure P-1), with all the consequential proceedings arising therefrom, on the basis of compromise dated 01.11.2018 (Annexure P-2).

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

3. Vide order dated 29.03.2023, parties were directed to appear before the Illaqa Magistrate/Trial Court and report with regard to the genuineness of the compromise was called for.

4. The report dated 13.04.2023 has been received from Judicial Magistrate 1st Class, Patiala, stating that the parties have entered into a

compromise, which is genuine, voluntary and without any coercion or undue influence.

5. Learned State counsel does not dispute the factum of the compromise amongst the parties and does not have any serious objection to the resolution of the dispute amongst the parties.

6. Heard learned counsel for the parties and have gone through the record carefully with their able assistance.

7. The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well.

8. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.

9. More often than not the civil disputes or inter-se conflicts of two parties transform themselves into criminal aspect. Therefore, the legal system plays empire to resolve the conflict between two parties; with the added task of ensuring that the adverse impact of dispute qua society at large is minimized.

But still the core idea is to resolve the conflict between two sides by putting it to rest. Therefore, even the criminal law is required to give due regard to the wishes of the parties to the dispute. Recognizing this principle only, the Indian legal System also provides for recognizing the compromise between two sides of a criminal dispute. Section 320 Cr.P.C. is an express provision in this regard. This section not only provides for compounding during the trial, but permits compounding even at appellate or revisional stage. However, by its very nature and scope, Section 320 Cr.P.C. cannot be the sole repository; wherein the recognition to a compromise between the parties have; necessarily; to be confined. This section relates only to the offences prescribed under the Indian Penal Code. There are lot more offences prescribed outside IPC. Even to the offences existing in the IPC new dimensions are added from time to time, making the existing offences to be lighter or stringent and even new modalities of proof of offences are being recognised in view of technological advancement. This necessitates and requires the need for looking beyond Section 320 Cr.P.C. to recognise the compromise between the parties to the dispute. But to maintain the sanctity of the procedure prescribed for criminal trial; the Trial Court cannot be permitted to travel beyond the scope prescribed under that procedure.

10. But, as observed above, the wishes of only parties to the criminal dispute would not always be sufficient to terminate a criminal trial in view of the patent, latent or subtle effect; their conduct would have left qua the society at large.

11. Therefore, the offences committed by persons involved in governance or administration for acquiring official power or while exercising

office power cannot be permitted to be compromised. Likewise, even the offences involving only two private persons, but reflecting depravity of character or involving causing intentional loss of life or causing intentional loss of property by extending imminent threat of loss of life; cannot be permitted to be compromised. Except the above-mentioned grave offences, there is every reason that all other offences should be permitted to be compromised by the Court. Since the proof of offences before the Court, again would involve the conduct of the parties to dispute, therefore if the Court does not permit the same to be compromised then the parties would tend to play tricks upon the Court to ensure the acquittal of accused by subverting the administration of criminal justice. It is never in the interest of administration of criminal justice to force the citizen to learn and adopt the tricks designed to be played upon Courts to subvert the justice system. So, it would always be in the interest of justice itself; that the compromise between the parties is recognized and the citizen remain moored and committed to the essentials of the system of administration of justice, at least, qua those offences, which the interest of society does not permit to be compromised.

12. As far as the case-in-hand, Section 306 constitutes an entirely independent offence. It is based on this principle of public policy that nobody should involve himself in, or instigate or aid, the commission of a crime. Instigation has to be with *mens rea*. A bare perusal of FIR shows that the act of suicide was not the direct result of the threat and harassment. Further, there is no clarity as to what was mentioned in the suicide note. It can be concluded that the suicide note simply indicated that the deceased was in depression. Thus, it does not amount to instigation.

13. Instigation has to be gathered from the circumstances of the case. All cases may not have direct evidence in regard to instigation having a direct nexus to the suicide. In order to prove that the accused abetted commission of suicide, it has to be established that –

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation [vide **State of Madhya Pradesh v Shrideen Chhattri Prasad Suryawanshi**, 2012 CrLJ 2106 (MP)].

14. In the present case also, there is no such allegation that the petitioners herein had instigated, provoked, incited or encouraged the deceased to commit suicide. Thus, the provisions contained in Section 107 Indian Penal Code are not attracted in the instant case. As such, no offence under section 306 Indian Penal Code is made out. Moreover, the parties in the present case have compromised.

15. The Hon'ble Supreme Court of India in a case titled as “**Gangula Mohan Reddy v. State of Andhra Pradesh**” reported as (2010) 1 SCC 750 has held as under:

"3. The brief facts which are relevant to dispose of this appeal are recapitulated as under: according to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs.7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides.

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17. 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 this act must have been intended to push the deceased into such a position that he committed suicide."

16. A perusal of the above judgment would also show that it had been observed by the Hon'ble Supreme Court that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without there being a positive act on the part of the accused to instigate or aid in committing of suicide, conviction cannot be sustained and it was further observed that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence and also requires an active act or direct act which led the deceased to commit suicide.

17. Having discussed the proposition in hand in the light of judicial pronouncements made from time to time and examining the statutory provision to make out an offence under Section 306 IPC, I culminate myself by recording the essential ingredients for making an accused liable for commissioning of offence under Section 306 IPC must be present.

- (i) There has to be a clear mens rea to commit an offence;
- (ii) It requires an active act or direct act which led the deceased to commit suicide;
- (iii) The said act must have been intended to push deceased into such a position that he commits suicide;
- (iv) An instigation must be immediately preceding to the step of committing suicide.

18. Now coming to the question of compounding the offence under Section 306 IPC on the basis of compromise dated 30.07.2021 (Annexure P-2), a reference to the Full Bench of this Court in '**Kulwinder Singh and others vs. State of Punjab**', 2007 (3) RCR (Criminal) 1052, is material, wherein it was held:

“The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in noncompoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice. The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined parameters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extraordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.”

19. Even further the Hon'ble Supreme Court has amply clarified the legal position on recognizing compromise in the case of '**Gian Singh Vs. State of Punjab and another**', 2012(4) RCR (Criminal) 543, while observing as under:

“57. 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 predominately civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

20. Furthermore, the broad principles for exercising the powers under Section 482 were summarized by the Hon'ble Supreme Court in the matter of **'ParbatbhaiAahir @ ParbatbhaiBhimsinhbhaiKarmur and others versus State of Gujarat and another'** (2017) 9 SCC 641', the same are extracted as under:

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions: 16.1 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;

16.2 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 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is noncompoundable.

16.3 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;

16.4 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;

16.5 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 formulated;

16.6 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;

16.7 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 in so far as the exercise of the inherent power to quash is concerned;

16.8 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;

16.9 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

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 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.”

21. Recently, the Hon’ble Supreme Court in ***Mariano Anto Bruno v Inspector of Police (2022)***, observed:

“To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent”

This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

22. The circumstances and material on record in the instant case, the afore-stated facts as opined herein above, do not constitute an offence under Section 306 Indian Penal Code. It is also crystal evident that in view of the amicable resolution of the issues amongst the parties, no useful purpose would be served by continuation of the proceedings as the parties to the lis would help each other for ensuing acquittal. The furtherance of the proceedings therefore, should be a wastage of judicial time as there are no chances of conviction.

23. Accordingly, the present petition is allowed and FIR No.0239, dated 20.09.2018 under Sections 306/34 of the Indian Penal Code, 1860 registered at Police Station Civil Lines, Patiala, District Patiala (Annexure P-1), with all the consequential proceedings arising therefrom, on the basis of compromise dated 01.11.2018 (Annexure P-2) arrived at between the parties.

24. Ordered accordingly.

27.04.2023
Neha

(SANDEEP MOUDGIL)
JUDGE

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