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

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CRM-M-38337-2023

Date of decision : 04.09.2023

Gurwinder Singh @ Kala**..... Petitioner****versus****State of Punjab and another****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: None for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 48 dated 15.03.2017, for offences punishable under Sections 279, 337 and 304-A of IPC, at Police Station Sohana, SAS Nagar (Mohali) on the basis of compromise placed on record as Annexure P-2.

2. Law with respect to exercise of jurisdiction under Section 482 Cr.P.C. qua offence punishable under Section 304-A IPC on the basis of compromise already stands settled by the Division Bench of this Court vide judgment dated 02.6.2016 passed in **CRM-M-40769-2014**, titled as '**Baldev Singh vs. State of Punjab and another**', holding as under:-

“XXXX

Undoubtedly, there is a distinction between the power of the Court to compound an offence under Section 320 Cr. P.C. and quashing of criminal proceedings in exercise of power under Section 482 Cr. P.C. In **Gian Singh's case (supra)** the Hon'ble Supreme Court has observed as under:-

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*“Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power **although the ultimate consequence may be acquittal or dismissal of indictment.**”*

(emphasis added)

In ***Gian Singh's case (supra)*** the question was regarding quashing of an offence punishable under Section 307 IPC on the basis of settlement between the parties. It was observed that the offence under Section 307 IPC would fall in the category of heinous and serious offences and is generally treated as a crime against society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of 307 IPC in the FIR or the charge is framed under the said provision. It would be open to the court to find out whether there is sufficient evidence to prove the charge under Section 307 IPC. It would be open to the High Court to formulate a prima facie analysis.

In ***Narinder Singh and others v. State of Punjab and another*** 2014 (2) R.C.R. (Criminal) 482 which also deals with a matter pertaining to an offence under Section

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307 IPC, it is observed as under:-

*“Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. **Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court.** Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”*

The offence under Section 304-A IPC presents a situation where the victim has lost his life in an accident. The legal representatives of the deceased may enter into a compromise with the accused for considerations best known to them, but to say that an offence under Section 304-A is private in nature is wholly incorrect. It is an offence which impacts society as a whole with its ripples casting their net far and wide, permeating to the very core.

While dealing with the question of reduction of sentence imposed under Section 304-A on account of compensation paid to the legal representatives of the deceased it has been observed by the Hon'ble Supreme Court in ***State of Punjab v. Saurabh Bakshi***, Criminal

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Appeal No. 520 of 2015, that there can be no proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim regardless of the gravity of the crime under Section 304-A, there should be a reduction in the sentence imposed. The increase in the number of road accidents where the drivers were totally rash and negligent was noticed. It was observed that they were driving with youthful enthusiasm as if there were no traffic rules or no discipline of law had come centre stage. Misplaced sympathy while applying the payment of compensation in such cases was decried. Such a mockery of justice would necessarily shatter the faith of public in the judicial system. There should not be an impetus to the nonchalant attitude of drivers who feel that “they are emperors of all they survey”. In a situation where poor felt that their lives are not safe and the pedestrians think of their uncertainty and the civilized persons drove in constant fear but were still apprehensive about the obnoxious attitude of the people who project themselves as larger than life the Hon'ble Supreme Court in immense anguish observed that the law makers should scrutinize, re-look and re-visit the sentencing policy in Section 304-A IPC. It is specifically observed that it is obligatory on the part of the court to see the impact of the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

In ***Dalbir Singh v. State of Haryana*** 2000(2) R.C.R. (Criminal) 816, it is observed by the Hon'ble Supreme Court that,

“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to

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maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic. (Emphasis added)

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, 6 (2000) 5 SCC 821 Page 13 one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

In the facts and circumstances of the case it would indeed be paradoxical and incorrect to hold that the offence under Section 304-A is private in nature. Its serious impact on society is not subject to understatement. When a person or persons lose their life/lives due to the rash and negligent

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act of the accused, the question of mens rea or intention in such a situation pales into insignificance. The wrong cannot be termed to be private or personal in nature like offences arising out of matrimony, relating to dowry etc., family disputes or criminal cases having overwhelmingly and predominantly a civil flavour like commercial, financial, mercantile, civil or partnership matters.

Another argument addressed vehemently in favour of the proposition is that the legal heirs get adequate compensation in a given situation and a quietus is afforded to needless litigation, as many a times criminal proceedings are initiated solely with a view to seek compensation. There is a basic flaw in this argument which compels us to reject it. To presume that a human life can be allowed to be shattered away due to the rash and negligent act, may be a mindless act or of false bravado or brazenness and thereafter permit its compounding/settlement on the basis of 'just monetary compensation' or any other consideration amounts to nothing but a complete mockery of justice, totally offensive to civilized thought. The question of compensation under the Motor Vehicles Act is a totally separate issue. There can be no question of bartering of a human life in this manner. While being fully conscious of the ground realities of our society where the victim's family may be in penury and may be beguiled into a compromise due to the harsh realities of life, a stamp of approval over such an activity cannot be afforded by the court.

To say that Courts should not hesitate to intervene in favour of the accused in such cases is indeed a dangerous proposition with a potential to provide an impetus to a proclivity on the part of the drivers to continue with their rash and negligent act buoyed by the thought that they would get away with the crime by affording sufficient compensation to the victim's legal representatives. Once it has been authoritatively held by the Supreme Court that even grant of compensation under Section 357 (3) Cr. P.C. is not to be regarded as a mitigating circumstance to reduce the sentence imposed and neither can it be a substitute for an adequate sentence in all cases, it cannot be held that in

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cases where the matter is settled with the legal heirs of the deceased by giving adequate compensation, the proceedings should be quashed.

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Likewise, to draw an analogy that in cases involving the offence under Section 307 which are of heinous nature, it has been opined by the courts that the factum of a settlement or compromise between the parties can be a guiding factor, is not justified. In the case under Section 304-A the victim is obviously not present to settle the matter. To permit a legal representative or legal heir to compromise or settle the matter is indeed an invitation to a dangerous trend and cannot be permitted. To quash the proceedings under Section 304-A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. Inclusion of the legal representatives in the definition of victim does not clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation.

However, it is trite to mention that the power of the High Court under Section 482 Cr. P.C. can nevertheless be exercised in appropriate matters where it is felt that a prima facie case is not made out in consonance with the settled

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principles of law. There can indeed be no fetter on this power to act for securing the ends of justice or to prevent the abuse of process of law. However this observation for a moment is not to be construed as taking the possibility of a conviction being bleak due to settlement, to be a relevant factor for quashing the FIR under Section 304-A IPC. Reference is thus answered in the negative as there can be no quashing of an offence registered under Section 304-A and subsequent proceedings, solely on the basis of a compromise arrived at between the legal heirs/ representatives of the victim (deceased) and the accused.

xxxx”

3. In view of above, this Court does not find any reason to interfere in the present petition and the same is ordered to be dismissed in view of law laid down by the Division Bench of this Court in *Baldev Singh’s case (supra)*.

(PANKAJ JAIN)
JUDGE

04.09.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No