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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45467-2022 (O&M)

Date of decision : 02.08.2023

Harvinder Singh Atwal

....Petitioner

Versus

Satinder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Saurav Bhatia, Advocate
for the petitioner.

Mr. Khushkaran Singh, Advocate
for the respondents.

PANKAJ JAIN, J.

1. By way of present petition, the petitioner seeks quashing of Complaint No.RG No.555 Case No.95/02 of 2015 titled as “**Satinder Singh V. M/s. Immigration Matter and another**”,(Ann P-1), on the basis of compromise dated 27.07.2022 entered between the parties, along with all the subsequent proceedings arising therefrom, including the P.O order dated 30.03.2016 (Annexure P-9).

2. While issuing notice of motion on 29.09.2022 following order was passed:-

“The petitioner, who is presently residing at USA, has filed the present petition through his general power of attorney Lajwant Singh (brother of the petitioner) under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 30.03.2016 (Annexure P-9) passed by learned Judicial Magistrate First Class, SBS Nagar whereby the petitioner was declared as proclaimed person and complaint No.RG No.582 Case No.115/02 of 2015 titled as 'Satinder Singh Vs. M/s Immigration Matter and

another' (Annexure P-1) on the basis of compromise dated 27.07.2022 (Annexure P-10) entered between the parties.

Learned counsel for the petitioner submits that after the complaint was filed, the petitioner was never served with the summons. The petitioner was never served at Village Barwa although the address in the complaint was given by the complainant/respondent No.1. Learned counsel for the petitioner further submits that the Trial Court did not follow the procedure prescribed under Section 82 of the Cr.P.C. in letter and spirit and that the petitioner was not afforded the requisite period of 30 days for causing his appearance after publication of proclamation notice.

Notice of motion.

At this stage, Mr. Khushkaran, Advocate has appeared and accepted notice on behalf of respondent No.1 and filed his power of attorney in the Court which is taken on record.

Learned Counsel for respondent No.1 admits the factum of compromise. Respondent No.2 in his affidavit dated 27.07.2022 (Annexure P-10) also stated that he has no objection if the impugned order 30.03.2016 declaring the petitioner as proclaimed offender is quashed.

In the present case the proclamation under Section 82 of the Cr.P.C. was issued on 26.02.2016 for causing appearance on 03.03.2016. Report was presented at the Court on 27.02.2016 with the comments that the present petitioner had gone abroad. Vide order dated 03.03.2016 the case was adjourned to 30.03.2016 for awaiting the appearance of the petitioner on the ground that statutory period of 30 days had not elapsed. This Court in *Ashok Kumar Vs. State of Haryana : 2013 (4) RCR (Criminal) 550* while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case of Court subsequently adjourned the matter, such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) of the Cr.P.C.

In view of aforesaid factual position and in light of ratio of *Ashok Kumar's case (supra)*, the impugned order dated 30.03.2016 (Annexure P-9) passed by learned Judicial Magistrate First Class, SBS Nagar declaring the petitioner as proclaimed offender as well as subsequent proceedings arising therefrom is hereby set aside. However, the petitioner (through his general power attorney Lajwant Singh) and respondent No.1 are directed to appear before the trial Court

within 15 days from today for recording their statements with regard to compromise/settlement subject to payment of costs of Rs.25,000/- to be deposited with the District Legal Services Authority, SBS Nagar. Trial Court is directed to submit a report before next date of hearing containing the following information:-

- 1. Number of persons arrayed as accused in the complaint case.*
- 2. Whether the compromise is genuine, voluntary and without any coercion or undue influence.*
- 3. Whether the accused person is involved in any other case or not.*
- 4. Current stage of the case.*

List on 05.12.2022.”

3. In compliance of the aforesaid order, report dated 16.11.2022 of the learned Judicial Magistrate First Class, SBS Nagar has been received. Along with the said report, statement of respondent No.1 and Lajwant (attorney holder of the petitioner are also annexed. The relevant extract of the aforesaid report would read as under:-

“From the statements made by the aforesaid parties, this court is satisfied that the complainant/respondent no. 2 namely Satinder Singh has entered into compromise with the aforementioned accused Harwinder Singh Atwal through his attorney Lajwant Singh, voluntarily, without any inducement, coercion or pressure etc. It is also respectfully submitted that as per statement suffered by complainant and as per record, there are two accused arrayed in the present complaint bearing no. 115/2 of 2015, as per the following array of accused:-

- 1. M/S The Immigration Matters, 1st Floor, Opposite Adarsh School, Banga road, Nawanshahr, through Harvinder Singh Atwal, its Managing Parter,*

2. Harvinder Singh Atwal, Managing Parter, M/S The Immigration Matters, 1st Floor, Opposite Adarsh School, Banga road, Nawanshahr, son of Shri Darshan Singh r/o village Barwa, District SBS Nagar.

It is further submitted that as per statement suffered by attorney of accused namely Lajwant Singh, accused Harwinder Singh Atwal is also involved in another IPC Complaint bearing no. Comi/2/2014 titled as "Atma Singh versus Harwinder Singh Atwal" and he has been declared PO in this complaint by the learned court of JMIC, Nakodar, District Jalandhar vide order dated 21.04.2017. The present file was lying consigned in Record Room and now, the same is pending for awaiting further orders of Hon'ble Punjab and Haryana High Court, Chandigarh.

4. A perusal of the aforesaid report along with the statements of respondent No.1 and the petitioner would reveal that a compromise has been effected between the parties, which is genuine, voluntarily and without any pressure or coercion. Thus, no useful purpose would be served by keeping the criminal complaint pending, the dispute of which has already been settled.

5. Mr. Khushkaran Singh, Advocate appears for the respondents and admits the fact of parties having compromised and states that he has no objection in case the complaint and all proceedings subsequent thereto against the petitioner are quashed.

6. Learned State counsel has stated no objection in case the FIR is quashed based upon the compromise.

7. I have heard learned counsel for the parties and have carefully gone through the records of the case.

8. After considering judgment rendered by the Apex Court in **Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688, Kulwinder Singh & others Vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052 and Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of 2012 decided on 29th of September, 2021)**, the proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

- (a) Power u/s 482 Cr.P.C. vested with this Court is not affected by Section 320 of the Code.
- (b) However, wider the power greater the caution.
- (c) The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.
- (d) The said power is not to be exercised in the prosecutions involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.
- (e) Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High Court would not refuse to quash FIR under Section 307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.

- (f) Such exercise at the hands of High Court would be permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter is still under investigation.
- (g) While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.

9. Thus, keeping in view the aforesaid facts and circumstances, this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested u/s 482 Cr.P.C. to quash the FIR as :-

- (i) The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra).
- (ii) The offences are of private nature.
- (iii) The parties have compromised.
- (iv) As per the report received the compromise is said to be voluntary in its nature.
- (v) Complainant/victim has entered into compromise on his own volition.

10. In view of the above, the present petition is allowed and the complaint bearing No.RG No.555 Case No.95/02 of 2015 tilted as **“Satinder Singh Vs. M/s Immigration Matter and another”**, (Ann P-1), along with all the subsequent proceedings arising therefrom, are hereby quashed qua the petitioner only.

August 02, 2023

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(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No