

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

CRM-M-5019-2022

Date of Decision : 11.05.2023

Sandeep Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. A.S.Salar, Advocate
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab
for the respondent-State.

Ms. Nargis, Advocate
for Mr. Gopal Singh Nahel, Advocate
for respondents No.2 and 3.

VIKRAM AGGARWAL, J (ORAL)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of FIR No.58 dated 29.06.2014, registered under Sections 454, 455, 380 IPC, at Police Station Sadar Sangrur, District Sangrur, Punjab and judgment of conviction and order of sentence dated 05.04.2018 (Annexure P-2), passed by the Addl. Chief Judicial Magistrate Sangrur alongwith all subsequent proceedings arising therefrom on the basis of compromise dated 06.01.2022 (Annexure P-4) having been arrived at between the parties.

2. It has been averred in the petition that the aforesaid FIR was registered against the petitioner and two other persons. After completion of

investigation, report under Section 173 Cr.P.C. was submitted in the Court. During the trial, the prosecution examined 11 witnesses. After considering the matter, the trial Court, vide judgment of conviction and order of sentence dated 05.04.2018, convicted and sentenced the petitioner to undergo rigorous imprisonment for 02 years and to pay a fine of Rs.2,000/- and in default thereof to further undergo rigorous imprisonment for 20 days under Section 392 read with Section 120-B IPC. Two co-accused namely Mandeep Singh and Parminder Singh were also convicted and sentenced under Sections 120-B, 392, 455 and 411 IPC. During the trial, respondent No.3 Baljinder Singh, husband of the petitioner filed a petition under Section 13 of the Hindu Marriage Act against the petitioner. Vide judgment and decree dated 11.12.2017, while allowing the said petition, the trial Court granted divorce to the parties.

3. Subsequently, a compromise (Annexure P-4) was arrived at between the parties on 06.01.2022. On the basis of this compromise, the present petition has been filed.

4. Vide order dated 02.03.2022, passed by a Coordinate Bench, the parties were directed to appear before the trial Court/Area Magistrate and get their statements recorded with regard to the genuineness of the compromise. The statements were ultimately recorded and report of the trial Court has been received.

5. Learned counsel for the petitioner submits that though all accused have not filed the present petition and the same has been filed only by the petitioner, the FIR deserves to be quashed qua her as she should not suffer the ordeal of a trial once the parties have buried their differences. It has

also been submitted that the dispute is of a private nature. He further submitted that on the basis of the compromise arrived at between the parties, the judgment of conviction and order of sentence dated 05.04.2018, FIR No.58 dated 29.06.2014, registered under Sections 454, 455, 380 IPC, at Police Station Sadar Sangrur, District Sangrur, Punjab and all consequential proceedings arising therefrom deserve to be quashed.

6. Learned counsel representing respondents No.2 and 3 has submitted that respondents No.2 and 3 have duly entered into a compromise with the petitioner and they would have no objection if the FIR is quashed qua the petitioner.

7. I have considered the submissions made by learned counsel for the parties and have perused the record.

8. The two questions to be decided in the present case are as to whether FIR can be quashed on the basis of a compromise having been arrived at by one accused with the complainant and that too after conviction can be ordered or not.

9. In **Sube Singh and another vs. State of Haryana and another 2014 (2) Crimes 299**, a Division Bench of this Court has held that where an offence is private in nature and is not against the whole society, the High Court would be empowered to compound the offence even at the appellate stage. The Division Bench held as under:-

11. The extent and sweep of inherent power exercisable by the High Court under Section 482 Criminal Procedure Code for quashing the criminal proceedings on the basis of compromise between the offender and the victim of crime in a case which is not compoundable under Section 320 Cr.P.C., has since been

considered in extenso and answered by the Hon'ble Supreme Court in *Gian Singh v. State of Punjab & Anr.*, (2012)4 RCR (Criminal) 543, laying down that the compounding of offence and quashing of criminal proceedings are two separate things and not interchangeable and that the two powers are distinct and different although ultimate consequence may be the same. It has been authoritatively ruled that where the offender and victim have settled their dispute, the High Court in exercise of its inherent power under Section 482 Cr.P.C., is competent to quash criminal proceedings even relating to the non-compoundable offences though such a power need to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc. The pronouncement thus says :-

"52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

53. 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.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crimedoer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being

convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

12. The decision in Gian Singh's case (supra) also approves the view taken by a five-Judge Bench of this Court in *Kulwinder Singh & Ors. v. State of Punjab & Anr., 2007(3) RCR (Criminal) 1052*.

13. It is indeed now unarguable to say that the power exercisable by the High Court under Section 482 Criminal Procedure Code for the quashing of criminal prosecution is limited or affected by the provision of Section 320 Cr.P.C.

14. We may, however, hasten to add that power of the Court under Section 320 Criminal Procedure Code to 'compound' an offence on the basis of compromise between the accused and the victim can be invoked only if the subject offence is compoundable. In other words, power under Section 320 Criminal Procedure Code is not exercisable in relation to a case of non-compoundable offence as ruled by the Hon'ble Supreme Court in a string of decisions including (i) *Surendra Nath Mohanty v. State of Orissa, 1999(2) RCR (Criminal) 683 : (1999)5 SCC 238*; (ii) *Bankat v. State of Maharashtra, 2005(1) RCR (Criminal) 306 : (2005)1 SCC 343*; and (iii) *Gulab Das & Ors. v. State of MP, 2012(1) RCR (Criminal) 220 : 2011(6) Recent Apex Judgments (R.A.J.) 381 : (2011)10 SCC 765*.

15. The refusal to invoke power under Section 320 Cr.P.C., however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.

Question No. 2

16. As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the

trial Court, we find that in *Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) RCR (Criminal) 910 : (2008)5 SCC 794*, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.

17. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.

Recently in the case of *Ram Gopal & Anr. vs. State of Madhya Pradesh 2021 (4) R.C.R. (Criminal) 322*, the Hon'ble Apex Court has held that non-compoundable criminal cases of pre-dominantly private in nature can be quashed under Section 482 Cr.P.C. even if compromise is reached after conviction. The Hon'ble Apex Court held as under:-

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C., 1973 where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C., 1973 or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C., 1973. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

In the case of ***Lovely Salhotra and another Vs. State NCT of Delhi and another 2017(3) R.C.R. (Criminal) 85***, quashing of an FIR was sought from the High Court of Delhi. There also, the FIR had been sought to be quashed in part. The prayer was rejected by the High Court of Delhi but in appeal, the Hon 'ble Supreme Court set aside the decision of the Delhi High Court and quashed the FIR. While doing so, it was held by the Hon'ble Apex Court as under:-

"3. We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants - herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants - herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 - herein only on the ground that the investigation against co-accused is still pending. It is pertinent

to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie."

10. Though the facts in the case under reference were different but the Hon'ble Supreme Court clearly held that the High Court was wrong in holding that an FIR cannot be quashed in part. This decision of the Hon'ble Supreme Court of India was relied upon by the Delhi High Court in another matter titled as ***Poonam Khanna Vs. State and Ors. 2018(2) AD (Delhi) 372***. In this case, one Poonam Khanna had invoked the powers of the Delhi High Court under Section 482 Cr.P.C. seeking quashing of FIR against her and requesting that her name be dropped from the list of the accused and proceedings be continued against other accused. The Delhi High Court, while relying upon the judgment of the Hon'ble Supreme Court in ***Lovely Salhotra's case*** (supra) quashed the FIR. A similar view was taken by Coordinate Benches of this Court in ***Parambir Singh Gill's case*** (supra), ***Gurjant Singh 's case*** (supra) and ***Ashok Kumar Garg's case*** (supra). I am in agreement with the said decisions and I am of the considered opinion that such a view can be taken depending upon the facts of a particular case. It has to be borne-in-mind that in criminal cases, no strait jacket formula can be laid down and each case has to be decided on its own facts. In so far as the facts of the present case are concerned, since the dispute is of a private nature and petitioners have duly entered into a compromise with respondents No.2 and 3, I do not see any reason to decline the request for quashing of the FIR qua the petitioner.

11. Reverting to the facts of the present case, there is nothing on record even to suggest that petitioner-accused had some criminal antecedents

or that she is habitual offender. Parties were husband and wife, though now they are separated. As per the compromise, respondents No.2 and 3 will pay Rs.30,00,000/- as lump sum amount to the petitioner and her son as present, past and future alimony and both the parties will withdraw all litigations pending in the Court(s). In any case, the parties have buried the hatchet. It is always in the interest of justice that such disputes should come to an end because if such disputes keep lingering on, it sometimes gives rise to bigger disputes. I, therefore, do not find any reason to not set aside the judgment vide which the petitioner-accused was convicted and sentenced and to not quash the FIR No.58 dated 29.06.2014, registered under Sections 454, 455, 380 IPC, at Police Station Sadar Sangrur, District Sangrur, Punjab and all subsequent proceedings arising therefrom on the basis of voluntary compromise dated 06.01.2022 (Annexure P-4) entered into between the parties which has been so reported by the trial Court vide its report dated 05.04.2022.

12. In view of the above, considering the fact that the parties have arrived at a compromise which is voluntary in nature as has been reported by the Court of Addl. Chief Judicial Magistrate, Sangrur vide its report dated 05.04.2022 and the dispute is private in nature, no useful purpose would be served by continuation of the proceedings against the present petitioner who is not known to be previous offenders and the same would be an exercise of futility.

13. A perusal of the aforesaid report would show that the parties have effected a genuine compromise without there being any pressure, coercion or undue influence. The compromise in question is also found to be fully in

consonance with the direction issued by the Court in *“Kulwinder Singh & Ors. Vs. State of Punjab 2007(3) RCR (Criminal) 1052 and Gian Singh Vs. State of Punjab & Anr., 2012(4) RCR (Crl.) 543”, Sube Singh's case (supra) and Ramm Gopal's case (supra)*

14. In view of the aforesaid discussion and the report of the trial Court accompanied by statements of both the parties, the present petition is allowed and the judgment of conviction and order of sentence dated 05.04.2018, FIR No.58 dated 29.06.2014, registered under Sections 454, 455, 380 IPC, at Police Station Sadar Sangrur, District Sangrur, Punjab and all subsequent proceedings arising therefrom are quashed qua the petitioner.

However, it would always be open to the complainant to approach the Court and seek recall of the order if there is any breach of the compromise by the petitioners.

(VIKRAM AGGARWAL)
JUDGE

11.05.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No