

**241 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-55165-2022****Date of Decision:27.04.2023**

Om Parkash @ Parkash and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Sushil Sheoran, Advocate
for the petitioners.Mr. Surender Singh, A.A.G., Punjab
for respondent No.1-State.Mr. N.S.Diwan, Advocate for
Mr. R.A.Sheoran, Advocate for
respondent No.2.

VIKRAM AGGARWAL, J. (ORAL)

1. Prayer in the present petition preferred under Section 482 of the Code of Criminal Procedure is for quashing of cross version dated 27.10.2011 in FIR No.148 datged 24.10.2011, registered under Sections 323, 324, 325, 326, 34 IPC, at Police Station Bawani Khera, District Bhiwani and judgment of conviction and order of sentence dated 31.03.2016, passed by Judicial Magistrate Ist Class, Bhiwani and all subsequent proceedings arising therefrom on the basis of compromise dated 14.11.2022 (Annexure P-4) having been arrived at between the parties.

2. It has been averred in the petition that an FIR No.148 dated 24.10.2011 was registered on the basis of statement of petitioner Bijender against Jaibir, Vikas, Saroj @ Guddi, Reena and Monika under Sections 323, 324, 325, 326, 34 IPC, at Police Station Bawani Khera, District

Bhiwani. It was alleged that respondent No.2 Jaibir registered cross version in the abovesaid FIR on 27.10.2011 against the petitioners. Investigation was carried out by the police and the petitioners were arraigned as accused in the cross version. The trial of both the cases was initiated in the court of Judicial Magistrate Ist Class, Bhiwani. After considering the matter, the trial Court, vide judgment of conviction and order of sentence dated 31.03.2016, convicted and sentenced the petitioners to undergo simple imprisonment for 06 months and to pay a fine of Rs.1,000/- each and in default of payment thereof to further undergo imprisonment for 01 month each on each count under Sections 323, 324 and 325 read with Section 34 IPC. An appeal was filed challenging the aforesaid judgment of conviction and order of sentence which is stated to be pending.

3. During the pendency of the appeal, a compromise was arrived at between the parties on 14.11.2022 and the same is on record as Annexure P-4. On the basis of this compromise, the present petition was filed.

4. Vide order dated 29.11.2022, notice of motion was issued and the parties were directed to appear before the lower Appellate Court and get their statements recorded with regard to genuineness of the compromise. The statements were ultimately recorded and report of lower Appellate Court has been received.

5. Learned counsel for the parties have submitted that on the basis of the compromise arrived at between the parties, the judgment of conviction and order of sentence dated 31.03.2016, cross version dated 27.10.2011 in FIR No.148 dated 24.10.2011, registered under Sections 323, 324, 325, 326, 34 IPC, at Police Station Bawani Khera, District Bhiwani and all consequential proceedings arising therefrom deserve to be quashed.

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

8. 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 crimedoeer 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.

9. 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.

10. Reverting to the facts of the present case, there is nothing on record even to suggest that petitioners-accused had some criminal antecedents or that they are habitual offenders. Parties are closely related and the dispute arose at the spur of the moment and as normally happens in families involved in agricultural work, the dispute was with regard to land owned by the two families. In any case, the parties have buried the hatchet.

It is always in the interest of justice that trivial disputes should come to an end and 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 were convicted and to quash the cross version dated 27.10.2011 in FIR No.148 dated 24.10.2011, registered under Sections 323, 324, 325, 326, 34 IPC, at Police Station Bawani Khera, District Bhiwani and judgment of conviction and order of sentence dated 31.03.2016, passed by Judicial Magistrate Ist Class, Bhiwani and all subsequent proceedings arising therefrom on the basis of voluntary compromise dated 14.11.2022 (Annexure P-4) entered into between the parties which has been so reported by the trial Court vide its report dated 06.01.2023.

11. 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)*

12. In view of the aforesaid discussion and the report of the trial Court accompanied by statements of both the parties, the judgment of conviction and order of sentence dated 31.03.2016, the cross version dated 27.10.2011 in FIR No.148 dated 24.10.2011, registered under Sections 323/324/325/326/34 IPC, at Police Station Bawani Khera, District Bhiwani and all consequential proceedings arising therefrom are hereby quashed qua the petitioners.

The present petition stands allowed accordingly.

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

27.04.2023
mamta

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