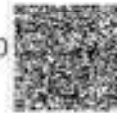


CRM-M-36810-2021

2024/PHHC/125230



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

SR. No.259

CRM-M-36810-2021

Date of decision:16.09.2024

Harmandeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Deepak Gupta, Advocate for the petitioner.

Mr.Deepinder Singh Brar, Sr. DAG, Punjab.

Mr. Rahul Sharma, Advocate for

Mr. Sumit Narang, Advocate for respondent No.2

N.S. SHEKHAWAT, J.

1. The present petition has been filed under Section 482 Cr.P.C. with a prayer to quash FIR No.36 dated 06.03.2019 under Section 420 IPC registered at Police Station Bagh Purana, District Moga (Annexure P-1) along with all subsequent proceedings arising therefrom on the basis of compromise arrived at between the parties. A further prayer has been made to set aside the impugned order dated 20.02.2010 (Anexure P-5) passed by the Judicial Magistrate 1st Class, Moga, whereby the petitioner had been declared to be a proclaimed offender.

2. Before proceeding to decide the issue relating to quashing of the FIR (Annexure P-1), it would be appropriate to examine the legality of the impugned order dated 20.02.2010 (Annexure P-5) passed by the trial Court, whereby the petitioner was declared as a proclaimed offender in the present case.

3. Learned counsel for the petitioner submitted that the petitioner was falsely involved in the FIR. In fact, after registration of FIR, warrants were issued against the petitioner, but he was never served through warrants. Ultimately, vide order dated 09.12.2009, it was ordered that the petitioner may be served through proclamation for 15.01.2010. The proclamation was, however, published on 08.01.2010, whereby the petitioner was directed to appear on 15.01.2010. On 15.01.2010, the trial Court also noticed the fact that the proclamation qua the petitioner was effected on 08.01.2010 and the statutory period of 30 days had not expired, consequently, the case was adjourned to 20.02.2010 for appearance of the petitioner. On 20.02.2010, the statement of serving official i.e. HC Jagdev Singh was recorded by the trial Court and the same has been reproduced below:-

“Statement of HC Jagdev Singh, No.906, Moga P.S. Baghapurana

The order of proclamation qua accused Harmandeep Singh son of Gurmit Singh was received by me. I went at the spot on 08.01.2010. The accused was not available. However, copy of proclamation was pasted on the door of house of the accused and another copy of the same was pasted on public place. A copy of same was also pasted on the notice board of the court complex. Copy of order is Ex.PX and proclamation report dated 08.01.2010 is Ex.PY.”

4. Learned counsel for the petitioner contended that the petitioner was declared to be a proclaimed offender in the present case by completely

5. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner had not appeared intentionally before the trial Court, despite having knowledge about the pendency of the proceedings before the trial Court. Thus, the present petition deserves to be dismissed. However, learned counsel for the respondents could not rebut the factual submissions made by the learned counsel for the petitioner in the present case.

6. I have heard the learned counsel for the parties and perused the record carefully with their able assistance.

7. It has been held by this Court in the matter of Ashok Kumar Vs.

State of Haryana and Anr.2013(4) RCR (Criminal) 550 as under:

3. "As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013,

which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“82. Proclamation for person absconding. --

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(1) xx xx xx xx xx xx xx

(2) xx xx xx xx xx xx xx

4. “In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.

8. Still further, it has been held by this Court in the matter of **Avtar**

Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017 which is as

under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code.”

9. In the present case also, this Court is of the considered view that the mandatory provisions of Section 82 Cr.P.C. had not been complied by the trial Court. Vide order dated 09.12.2019, the present petitioner was ordered to be served through proclamation for 15.01.2010. Admittedly, the proclamation was published on 08.01.2010, requiring the petitioner to appear on 15.01.2010, i.e. after a period of seven days of publication of the proclamation. Thus, the statutory notice of 30 days was not granted to the petitioner for his appearance before the trial Court. Further, even the trial Court had noticed on 15.01.2010 that since the statutory period of 30 days had not expired, the case was adjourned to 20.02.2010, awaiting the appearance of the accused. However, the adjournment to 20.02.2010 can never be construed as sufficient compliance of the provisions of Section 82(1) Cr.P.C. Thus, this Court has no hesitation to conclude that the trial Court had not complied with the provisions of Section 82(1) Cr.P.C. while declaring the petitioner as a proclaimed offender.

10. Still further, from a cumulative reading of the above referred provisions of the Code, it is evident that all the persons, who are absconding or concealing themselves so that the warrants may not be executed, cannot be declared as proclaimed offender. Only where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under the offences mentioned in Section 82(4) Cr.P.C. and such person fails to appear at the specific place and time required by the proclamation, the Court may pronounce such person as proclaimed offender. However, if the proclamation is respecting the offence, other than the offences mentioned in Section 82(4) Cr.P.C., then such persons, who are absconding and concealing themselves to affect the execution of warrants of arrest, could be declared as proclaimed persons. From a plain reading of the provisions of Section 82 of Cr.P.C., it is evident that there is a distinction between a proclaimed person and a proclaimed offender. The said distinction is further reinforced by the provisions of Section 174-A IPC. As per Section 174-A IPC, if a person is declared as “proclaimed person” then he shall be punished with imprisonment for a term, which may extend to three years and or fine or both and where a declaration has been made in sub-section 4 of Section 82 Cr.P.C. pronouncing him as a “proclaimed offender”, he shall be punished with the imprisonment for a term which may extend to seven years and shall also be liable to fine. Thus, from the scheme of Code itself, it is evident that the words “Proclaimed Person” and “Proclaimed Offender” have different meanings and different punishments have been provided under the statute for the said violation of law. Even similar observations have

been made by this Court in the matter of **Satinder Singh Vs. The State of U.T., Chandigarh and another, 2011(2) R.C.R. (Criminal) 89.**

11. In the present case, the petitioner was facing the prosecution under Section 420 IPC and has been wrongly declared as proclaimed offender. In fact at the worst, the petitioner could be declared as a “proclaimed person” and not a proclaimed offender, in view of the law laid down by this Court in the matter of **Satinder Singh** (supra). The impugned order is liable to be set aside on this count also.

12. Now adverting to the prayer of the petitioner for quashing of FIR in question on the basis of compromise, the same was ordered to be registered against the petitioner on the basis of a complaint moved by Bank Manager, Bank of India, Rode Branch, District Moga. During the course of proceedings before this Court, a short reply was filed on behalf of respondent No.2, which is taken on record.

13. Learned counsel for the petitioner submitted that in the present case, the petitioner has already settled his loan account with the Bank-respondent No.2 and the Bank has already been issued a certificate (Annexure R-2/1) to that effect. As per the Certificate, Annexure R-2/1, the Bank had certified that the loan account of the petitioner was closed under compromise/settlement and no outstanding balance was pending in the said account.

14. During the course of arguments, learned counsel for respondent No.2 submitted that the matter has been amicably resolved between the parties and he has no objection if the FIR in question and all other

subsequent proceedings arising therefrom are ordered to be quashed by this Court.

15. The Hon'ble Supreme Court of India has held in the matter of ***Narinder Singh and others vs. State of Punjab and another, (2014) 6 SCC 466*** as follows:-

“ 31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings :

(I) Power conferred under section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure :

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under

special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 I.P.C. would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 I.P.C. in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 I.P.C. is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 I.P.C. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible

for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. 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 I.P.C. 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 I.P.C. 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.”

16. While considering the issue regarding quashing of the FIR under Section 307 IPC on the basis of compromise, the Hon'ble Supreme Court held in the matter of ***“State of Madhya Pradesh Vs. Laxmi Narayan; 2019 AIR (SC) 1296*** as follows:-

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under section 482 of the Code, on the ground that the parties have resolved their entire dispute

amongst themselves. However, the High Court would not rest its decision merely because there is a mention of section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

17. Keeping in view the law laid down by Hon'ble the Supreme Court as referred to above and the fact that the parties have compromised the matter and the loan account has been settled by the petitioner with respondent No.2, FIR No.36 dated 06.03.2019 under Section 420 IPC registered at Police Station Bagh Purana, District Moga along with all

subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

18. As regards the order dated 20.02.2010 (Annexure P-5) passed by the Judicial Magistrate 1st Class, Moga, declaring the petitioner to be proclaimed offender, the same is also set aside, keeping in view the observations made above.

18. The present petition stands allowed, accordingly. Pending application(s), if any, shall also stand disposed of.

16.09.2024
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned:	YES / NO
Whether Reportable:	YES / NO