



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

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CRM-M-40039-2024

Date of decision: August 20th, 2024

Sukhwinder Singh @ Jassi @ Dhatu

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Krishan Kanha, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for quashing of FIR No.74 dated 15.10.2016 under Sections 279, 304-A, 337, 427 of the IPC registered at Police Station Jaurkian, District Mansa, along with judgment of conviction and order of sentence dated 19.11.2018 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Sardulgarh, Mansa, along with all consequential proceedings arising therefrom on the basis of compromise dated 25.07.2024 (Annexure P-3).

2. Learned counsel for the petitioner has submitted that no doubt, the petitioner faced trial in the aforementioned FIR and vide order dated 19.11.2018, he was convicted and sentenced to undergo imprisonment as detailed hereinunder, however, with the intervention of well wishers and respectables, the parties had arrived at an amicable settlement vide compromise dated 25.07.2024 annexed as Annexure P-3. Learned counsel thus, argued that in the aforementioned

facts and circumstances, sustaining the conviction against the petitioners would be a travesty of justice:-

Offence(s) u/s	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
279 of the IPC	R.I. for 2 months	₹500/-	5 days
304-A of the IPC	R.I. for 2 years	₹1,000/-	15 days
337 of the IPC	R.I. for 2 months	₹500/-	5 days
427 of the IPC	R.I. for 6 months	₹500/-	5 days

3. I have heard learned counsel for the petitioner and perused the relevant material on record.
4. There is no doubt that this Court is vested with extraordinary powers under Section 482 Cr.P.C./528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) to quash an FIR/compound offences, where the offences are private in nature and the parties involved have amicably settled their disputes. However, it must be underscored that such powers are to be exercised with utmost restraint and only in the most exceptional circumstances. Hon’ble the Supreme Court has consistently cautioned against indiscriminate quashing of FIRs, even when parties have reached a settlement, especially in cases where the offences are of a serious nature and have a considerable impact on society.
5. Turning to the facts of the instant case, the allegations in the FIR in question were, without doubt, grave. The trial Court on the basis of the material and other evidence led, convicted the petitioner and sentenced him as already detailed in the earlier part of this order.
6. As per the FIR, the complainant-respondent No.2 was travelling with his sister and his young nephew (hereinafter referred to as ‘deceased’) when the petitioner drove recklessly, colliding with the

vehicle of the complainant from its left side. This collision resulted in the deceased suffering fatal injuries.

7. It is crucial to recognize that when the offence in question is non-compoundable, as in the present case, quashing the FIR/compounding the offences based on a compromise is only permissible when the accused and the victim both are parties to the settlement.

8. From a legal perspective, the term 'victim' encompasses several dimensions:

(i) **Direct Sufferer of Harm:** The primary meaning of 'victim', refers to an individual, who has directly experienced loss, harm and injury as a result of the alleged criminal act or omission. This person is the immediate recipient of the offence, such as someone, who is physically injured or may have suffered damage to his or her property.

(ii) **Inclusion of Legal Representatives:** The term 'victim' may also extend to the legal representatives of the victim, such as guardians or legal heirs, particularly when the victim is deceased. These representatives of a deceased-victim are included in the definition to enable their participation in legal proceedings (such as filing appeals or seeking compensation), however, they do not hold the same status as the direct victim. Their role is primarily procedural and does not extend to settling or compromising criminal charges directly, especially in serious offences.

(iii) **Broader Legal Context:** The term 'victim' also implies a broader societal interest in protecting individuals from harm and ensuring accountability. It reflects the commitment of

the legal system to not only addressing the immediate impact of criminal acts upon individuals but also the broader implications for societal safety and justice.

9. Thus, in the context of offences that directly impact the human body-such as those punishable under Sections 302, 304, 304-A, 304-B and 396 of the IPC/103, 105, 106(1), 80, 310 (3) of the BNS etc.-the victim is unequivocally the deceased, as he is the primary individual, who has endured the harm, culminating in the ultimate loss of life due to the actions or negligence of the accused. The status of the deceased as the primary victim is established by the irreversible and fatal nature of the injury suffered.

10. The aforesaid principle has also been affirmed by this Court in CRM-M No.31007 of 2019 titled as *Sharif Khan Versus State of Haryana and others*, where a prayer was made for quashing of an FIR under Section 304-A and 420 of the IPC, and relevant provision of Indian Medical Council Act, 1956, on grounds of a compromise. This Court observed as follows:-

“The question which thus arises is as to who could be termed “a victim/aggrieved person” in a given case. It would be thus, apposite to reproduce Section 2(wa) of Cr.P.C., wherein, the term 'victim' has been defined, as under:-

“2(wa). “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.”

A reading of the aforementioned, leaves no manner of doubt that in offences particularly affecting the human body (e.g. under Sections 302/304/304A/304B and 396 IPC), it is the deceased, who would fall within the meaning of 'victim' as it is, he/she, who has suffered the injury and subsequent loss

of life on account of the act or omission for which the accused has been charged with. No doubt, the legal heirs of the deceased would also fall within the definition of 'victim', but that would be to a limited extent for the purpose of maintaining an appeal within the first part of Section 2(wa) of Cr.P.C.”

11. In the instant case, the deceased-a young boy of about 4 years-lost his life due to the reckless and negligent driving of the petitioner. Clearly, the victim here is the deceased, as he is the one, who suffered the ultimate loss. Consequently, any compromise between the accused and the complainant that excludes the victim-who in the present case is the deceased-would not only be legally void but also contrary to the spirit of the law. Compounding of the offences under these circumstances would undermine the purpose of law and would set a dangerous precedent.

12. Offences under Section 304-A of the IPC/Section 106(1) of the BNS cannot be considered private in nature due to their significant societal impact. The absence of *mens rea* does not lessen the severity of causing death through rash and negligent acts. These offences are distinct from private civil disputes like matrimonial or family disputes etc. Allowing the compounding of the offences post the conviction of the petitioner could encourage reckless behaviour by suggesting that criminal liability can be still avoided even after the prosecution is able to prove its case against an accused beyond reasonable doubt. The aforesaid position was re-enforced by a Division Bench of this Court in *Baldev Singh Versus State of Punjab 2016 (164) AIC 307*, wherein it has been held as under:-

“18. 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 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.

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

21. 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.”

13. Consequently, the settlement/compromise arrived at between the petitioner and the family of the deceased cannot be a ground for compounding the offences in the present case. Such a compromise is legally untenable and contrary to the objectives of justice, as it effectively disregards the rights of the true victim i.e. the deceased. It needs to be emphasized that the law mandates that in serious offences, like the one in the instant case, the focus must remain upon upholding justice and ensuring accountability, rather than allowing compromises and settlements between the parties to undermine the rule of law.

14. In the facts and circumstances as enumerated hereinabove, the instant petition stands dismissed.

15. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 20th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes