

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-2444-2023 (O&M)
Date of decision : 28.02.2024

Varinder Kaur

..... Petitioner

versus

Vipin Arora

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Bhawesh Chaudhary, Advocate
for the petitioner.

Mr. Jaswinder Singh Rana, Advocate for
Mr. Roshan Lal Saini, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. By way of present petition, the petitioner prays for setting aside judgment of conviction and order of sentence of the petitioner passed by JMIC, Phagwara dated 28.11.2016 subsequently upheld by learned Additional Sessions Judge, Kapurthala vide judgment dated 16.09.2022 and all subsequent proceedings arising therefrom on the basis of compromise.

2. Ld. Counsel for the petitioner relies upon the judgment passed by **Apex Court in the case of 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)**, to contend that this Court while exercising jurisdiction under Section 482 Cr.P.C. can quash the complaint/FIR and criminal proceedings even at the stage of post-conviction when **appeal is pending**.

3. In the case **Ram Gopal and another vs. State of Madhya Pradesh** (supra) Apex Court held as under :

“18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot *ipso facto* be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. 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. 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. 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.”

4. On 05.02.2024, the following order was passed:-

“Counsels are ad idem that the parties have amicably settled their dispute and the same stands reduced into writing vide Annexure A-1.

In view of above, the parties are directed to

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appear before the concerned Magistrate for recording of their statement w.r.t. compromise arrived at between them, on **12.02.2024**.

On their doing so, the learned Trial Court/Duty Magistrate shall record their statements and furnish its report to this Court by the next date of hearing i.e. **22.02.2024**.

Needless to say that in case for any reason the statements are not recorded on the aforesaid date, the learned Trial Court/Duty Magistrate shall be at liberty to call the parties on any other date but not later than a week thereafter.”

5. Pursuant to the aforesaid order, report dated 19.02.2024 from JMIC, Phagwara has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

“xx xx xx

Both the parties ie. complainant Vipin Arora through attorney Gurparshad Tapial and accused Varinder Kaur appeared in the Court for getting their statements recorded regarding compromise effected between them. Attorney of complainant namely Gurparshad Tapial suffered statement to the effect that complainant got registered a complaint against accused Varinder Kaur under Section 138 of Negotiable Instrument Act. He further stated that with the intervention of respectable persons, the matter has been compromised between complainant through him and accused Varinder Kaur and now complainant has no grudge against accused Varinder Kaur. He also stated that he is suffering the statement voluntarily and without any fear, coercion, pressure and undue influence. He lastly stated that complainant has no objection if the complaint be quashed. Accused

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Varinder Kaur also suffered similar statement.

From the statements of both the parties, the compromise appears to be genuine, voluntary and without any pressure, coercion or undue influence.”

6. Mr. Jaswinder Singh Rana, Advocate for Mr. Roshan Lal Saini, Advocate appears for the respondent 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.

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

8. This Court and Apex Court has repeatedly dealt with the issue of exercise of jurisdiction under Section 482 Cr.P.C. to quash proceedings recognizing compromise between parties in non-compoundable offences in the cases of **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 much wider and is unaffected 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 complaint/FIR as :-

*(i) The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra) i.e. heinous offence.*

(ii) The offences alleged 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 is reported to have entered into compromise on his own volition.

(vi) Though the petitioners already stand convicted yet in view of law laid down by the Apex Court in the

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case of Ram Gopal and another vs. State of Madhya Pradesh (supra), this Court finds it to be a fit case to exercise jurisdiction under Section 482 Cr.P.C. to quash the FIR and all consequential proceedings emanating therefrom including the order of conviction.

10. Consequently, the petition is allowed. Judgment of conviction and order of sentence of the petitioner passed by JMIC, Phagwara dated 28.11.2016 subsequently upheld by learned Additional Sessions Judge, Kapurthala vide judgment dated 16.09.2022 and all subsequent proceedings arising therefrom on the basis of compromise are, hereby, set aside qua the petitioner.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

28.02.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable	No