

(2023) 01 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 48816 Of 2022

Anil Hiralal Nenwani

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 136

Code Of Criminal Procedure, 1973 — Section 320, 320(2), 482

Citation : (2023) 01 P&H CK 0105

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Deepak Girotra, Brijesh Sharma, Satish Saini

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

576

17.08.2021

Hansi City, Distt. Hansi

323, 34, 406, 420, 506 IPC

1. The petitioner, arraigned as accused in the above captioned FIR, has come up before this Court under Section 482 CrPC for quashing of the FIR and all consequential proceedings based on the compromise with the aggrieved person.

2. During the pendency of the petition, the accused and the aggrieved person have compromised the matter, and its copy is annexed with this petition as Annexure P-2.

3. After that, the petitioner came up before this Court to quash the FIR, and in the quash-ing petition, impleading the aggrieved persons as respondent. Vide order dated 21.10.2022, the parties were directed to appear before the concerned Court and record their respective statements.

4. On 15.11.2022, the aggrieved person Raj Kumar (R-2) appeared before the learned SDJM, Hansi and stated that there would be no objection if the court quashes this FIR and consequent proceedings. As per the concerned court's report dated 18.11.2022, the parties consented to the quashing of FIR and consequent proceedings without any threat.

ANALYSIS & REASONING:

5. Despite the severe opposition of the State's counsel to this compromise, the following aspects would be relevant to conclude this petition: -

a) The accused and the private respondent have amicably settled the matter between them in terms of the compromise deed and the statements recorded before the concerned Court;

b) A perusal of the documents reveal that the settlement has not been secured through coercion, threats, social boycotts, bribes, or other dubious means;

c) The aggrieved person has willingly consented to the nullification of criminal proceedings;

d) There is no objection from the private respondent in case present FIR and consequent proceedings are quashed;

e) In the given facts, the occurrence does not affect public peace or tranquillity, moral turpitude or harm the social and moral fabric of the society or involve matters concerning public policy;

f) The rejection of compromise may also lead to ill will. The pendency of trial affects career and happiness;

g) There is nothing on the record to prima facie consider the accused as an unscrupulous, incorrigible, or professional offender;

h) The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family, community, and society;

i) The exercise of the inherent power for quashing FIR and all consequential proceedings is justified to secure the ends of justice.

6. In the present case all the offence are compoundable under Section 320 CrPC.

7. In *C.B.I., New Delhi v. Duncans Agro Industries Ltd., Calcutta, 1996(5) SCC*

591, Hon'ble Supreme Court holds,

[26]. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegation in the complaint prima facie make out an offence or not. It is not necessary to scrutinise whether the allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not.

[29]. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the concerned Companies. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think the said complaints should be pursued any further. In our view, proceeding further with the complaints will not be expedient. In the special facts of the case, it appears to us that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals.

8. In *Nikhil Merchant vs C.B.I. &Anr*, Cr.A 1302 of 2008, Hon'ble Supreme Court holds,

[22]. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320Cr.P.C. with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in *B.S. Joshi's case* (supra) becomes relevant.

[23]. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder

the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

[24]. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

9. In *Shakuntala Sawhney v Kaushalya Sawhney*, (1979) 3 SCR 639, at P 642, Hon'ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

10. In the light of the judicial precedents referred to above, given the terms of compromise, placement of parties, and other factors peculiar to the case, the contents of the compromise deed and its objectives point towards its acceptance.

11. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, 2018 (4) Crimes 324, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated."

12. Considering the entire facts, compromise, and in the light of the above-mentioned judicial precedents, I believe that continuing these proceedings will not suffice any fruitful purpose whatsoever. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the FIR and all subsequent proceedings qua the petitioner(s). The bail bonds of the petitioner are accordingly discharged.

Petition allowed in the terms mentioned above. All pending applications, if any, stand disposed of.