

(2014) 07 SHI CK 0080
In the High Court Of Himachal Pradesh
Case No : Cr. MMO No. 100 of 2014

Kurban Ali

APPELLANT

Vs

Talbir Hussain

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 321, 482
Penal Code, 1860 (IPC) — Section 147, 149, 323, 325

Citation : (2014) 07 SHI CK 0080

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Ramesh Sharma, Advocate for the Appellant; Dheeraj K. Vashisth, Advocate, D.S. Nainta, Virender Verma, Addl. A.Gs. and Pushpinder Jaswal, Dy. A.G, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.—Heard.

2. The petitioners are accused in FIR No. 3 of 2013 registered against them in Police Station, Amb, District Una under Sections 147, 149, 323 and 325 of the Indian Penal Code at the instance of Talbir Hussain, the 1st respondent. This petition has been filed for quashing the FIR on the ground that with the passage of time, they have compromised all their disputes with the complainant-1st respondent, who now is not interested to prosecute them any further in this case. A copy of compromise has been placed on record as Annexure P-2. Talbir Hussain, the 1st respondent-complainant is present in person. His statement has been recorded separately. He testified in his statement the contents of this petition and admits that he having arrived at an amicable settlement with the accused-petitioners is no more interested to prosecute them any further in this case.

3. It is seen that the offence the accused-petitioners allegedly committed u/s 323 IPC is compoundable by the complainant himself, whereas, the offence u/s

325 IPC though is compoundable, however, with the permission of the Court. The offence, the accused petitioners allegedly committed under Sections 147 and 149 IPC is, however, non-compoundable. Therefore, the only remedy available to the accused-petitioners is to have approached this Court u/s 482 of the Code of Criminal Procedure with a prayer to quash the criminal proceedings in view of the subsequent developments having taken place in this matter.

4. No doubt, an appropriate application u/s 320 or 321 of the Code of Criminal Procedure for compounding of an offence and withdrawal of prosecution in a criminal case could have only been filed in the trial Court. However, keeping in view that the offence punishable under Sections 147 and 149 of Indian Penal Code are not compoundable one, therefore, no such application can be filed or entertained. On the other hand, the law on the issue is no more res-integra as the Apex Court in *Gian Singh Vs. State of Punjab and Another*, has held that the High Court in exercise of inherent powers vested in it u/s 482 of the Code of Criminal Procedure, may quash the FIR in appropriate cases having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions, matrimonial or relating to dowry etc., in which the wrong basically is done to the victim and irrespective of the offence not compoundable, the victim and the accused have settled the dispute amicably. However, as per this judgment, the apex Court, in cases of serious nature like rape, dacoity and corruption cases etc., had deprecated the practice of quashing FIR for the reason that such offences have serious impact in the society at large. This judgment reads as follows:-

58. 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 crime-doer 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 IPC 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.

5. In the case in hand, respondent No. 1 is the victim. Some settlement has been arrived at between him and the accused persons and the same stands reduced into writing and also annexed with this petition as Ext. P-2. The accused-petitioners and Talbir Hussain, the 1st respondent, seems to be the members of the same community. They have decided to put an end to the litigation in order to maintain cordial relations.

6. Being so, I accept this petition and quash FIR No. 3 of 2013 registered under Sections 147, 149, 323 and 325 of Indian Penal Code against the accused-petitioners in Police Station, Amb, District Una and also all the consequential proceedings i.e. Criminal Case No. 281-1-13 pending in the Court of Additional Chief Judicial Magistrate Court No. 1, Amb, District Una, H.P.

7. With the above observations, this petition stands finally disposed of, so also the pending application(s), if any.