

(2022) 03 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 6517 Of 2022

Nitish Ghai & Another

APPELLANT

Vs

State Of Punjab & Another

RESPONDENT

Date of Decision : 23-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 120B, 320, 420
Emigration Act, 1983 — Section 25
Prise Chits And Money Circulation (Banning) Act, 1978 — Section 4, 5, 6

Citation : (2022) 03 P&H CK 0072

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : G.S. Virk, Harpreet Singh Multani, Anshika Sharma

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

66

2.3.2020

Division No.6, Ludhiana

420, 120-B IPC & Sec.24 of Immigration Act.

1. The petitioner(s), 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 victim(s).

2. During the pendency of the petition, the accused and the victim(s) have compromised the matter, and its copy is annexed with this petition.

3. After that, the petitioner(s) came up before this Court to quash the FIR, and in the quashing petition, the victim(s) have been impleaded as respondent(s).

4. On 2-3-2022, the victim/ complainant Kamal Kishore, the respondent no. 2 stated before the JMIC Ludhiana that there would be no objection if the court quashes this FIR and consequent proceedings. As per the concerned court's report dated 9-3-2022, 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(s) 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 victim has willingly consented to the nullification of criminal proceedings;

d) There is no objection from the private respondents 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, although offence under section 420 IPC is compoundable with the permission of the Court but the offences under section 120-B of Indian Penal Code, 1860 as well as the offence under section 25 of The Emigration Act, 1983, are not compoundable under Section 320 CrPC. However, in the facts and circumstances peculiar to this case, the prosecution qua the non-compoundable

offences can be closed by quashing the FIR and consequent proceedings.

7. In *Manoj Sharma v. State*, 2008(4) R.C.R.(Criminal) 827, Hon'ble Supreme Court quashed the criminal proceedings holding as follows,

[8]. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The First Information Report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the First Information Report was the basis of the investigation by the Police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the First Information Report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case. As we have indicated hereinbefore, the exercise of power under Section 482 Criminal Procedure Code or Article 226 of the Constitution is discretionary to be exercised in the facts of each case.

8. In *Gold Quest International Private Limited v. State of Tamil Nadu*, (2014) 15 SCC 235, Hon'ble Supreme Court holds,

[3]. Brief facts of the case are that the appellant is an International Numismatic Company which has operations in over sixty countries. It is pleaded that it conducts its business with necessary licence. The multi level marketing through direct selling of products is being adopted by the Company in the interest of the consumers by eliminating the middleman and rewarding the consumer by reducing the prices. The appellant-company has over sixteen thousand members/consumers in and around the city of Chennai alone. A complaint was made in the year 2003 by Respondent No. 7 against the appellant-company alleging non-compliance of issuance of numismatic gold coin on receipt of L 16,800/- from wife of Respondent No. 7 as per the promise made by the appellant-company. Some other customers also had complaints on the basis of which Respondent No. 4 registered a case under Section 420 of the Indian Penal Code read with Sections 4, 5 & 6 of the Prize Chits and Money Circulation (Banning) Act, 1978. The appellant-company filed a writ petition being W.P.No. 26784 of 2003 before the High Court of Judicature at Madras praying therein that the FIR registered against it be quashed. Since all the claimants including the complainant settled the dispute with the appellant-company and entered into an agreement, learned Single Judge of the High Court by its order dated 19th April, 2005 quashed the FIR, and disposed of the aforesaid writ petition. However, the State-respondents challenged the said order dated 19th April, 2005 passed by the learned Single Judge whereby the FIR No. 307 of 2003 was quashed, before the Division Bench of the High Court. The Division Bench allowed the writ appeal being W.A.No. 1178 of 2005 filed by the State-respondents and directed Respondent No. 4 to

investigate the crime. Hence, this appeal.

[8]. In view of the principle laid down by this Court in the aforesaid cases, we are of the view in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr.P.C. read with Article 226 of the Constitution. However, the same would not apply where the nature of offence is very serious like rape, murder, robbery, dacoity, cases under Prevention of Corruption Act, cases under Narcotic Drugs and Psychotropic Substances Act and other similar kind of offences in which punishment of life imprisonment or death can be awarded. After considering the facts and circumstances of the present case, we are of the view that learned Single Judge did not commit any error of law in quashing the FIR after not only the complainant and the appellant settled their money dispute but also the other alleged sufferers entered into an agreement with the appellant, and as such, they too settled their claims.

9. In *Shiji @ Pappu v. Radhika*, (2011) 10 SCC 705, Hon'ble Supreme Court holds,

[13]. It is manifest that simply because an offence is not compoundable under Section 320 Indian Penal Code is by itself no reason for the High Court to refuse exercise of its power under Section 482 Criminal Procedure Code That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Criminal Procedure Code on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Criminal Procedure Code are not for that purpose controlled by Section 320 Criminal Procedure Code Having said so, we must hasten to add that the plenitude of the power under Section 482 Criminal Procedure Code by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that

power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

10. In *Parbatbhai Aahir v State of Gujarat*, (2017) 9 SCC 641, a three Judges Bench of Hon'ble Supreme Court, laid down the broad principles for quashing of FIR, which are reproduced as follows: -

[16]. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions:

16 (i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16 (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16 (iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16 (iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16 (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16 (vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing

persons for serious offences;

16 (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16 (viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute; 16 (ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16 (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

11. In *Ramgopal v. The State of Madhya Pradesh*, Cr.A 1489 of 2012, decided on 29.09.2021, Hon'ble Supreme Court holds,

[11]. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

[12]. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the

administration of criminal justice system.

[13]. It appears to us those criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. vs. State of Punjab & Ors.* [(2014) 6 SCC 466, 29], and *Laxmi Narayan* [(2019) 5 SCC 688, 15].

[14]. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed between two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

12. 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.

13. 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 stand vitiated."

14. 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. All pending application(s), if any, stand closed.

Petition allowed in the terms mentioned above.