

(2012) 09 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : CRM No. M-4112 of 2012

Prabh Dayal and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 320, 323, 324
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482

Citation : (2012) 09 P&H CK 0007

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : K.S. Kahlon in CRM No. M-4112 of 2012 and Mr. J.S. Sandhu, AAG, Punjab, Mr. Abhinashi Arora, for Mr. Ajay Arora in CRM No. M-4112 of 2012, for the Appellant; J.S. Sandhu, AAG, Punjab, Mr. Abhinashi Arora, Advocate for Mr. Ajay Arora, Advocate in CRM No. M-4112 of 2012 and Mr. K.S. Kahlon, Advocate, in CRM No. M-4112 of 2012, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—This order shall dispose of two petitions bearing CRM No. M-4112 of 2012 and CRM No.M-5267 of 2012, having arisen out of the same incident. The petitioners have approached this Court by way of instant petitions u/s 482 of the Code of Criminal Procedure (for short "Cr. P.C.") invoking its inherent jurisdiction for quashing of FIR No. 116 dated 30.6.2009 under Sections 326, 324, 323, 148 and 149 of Indian Penal Code ("IPC" for short) and cross case under Sections 323 and 34 IPC registered at Police Station Sadar, Gurdaspur including the consequential proceedings arising therefrom, on the basis of compromise (Annexure P-3).

2. Notice of motion was issued.

3. In compliance of the order dated 12.3.2012 passed by this Court, the parties got their statements recorded before the learned trial court. Consequently, report dated 4.4.2012 sent by learned Additional Chief Judicial Magistrate, Gurdaspur,

has been received which is available on record of the case alongwith the statements of the parties. Learned Magistrate has reported that the parties have made their statements voluntarily and without any pressure. The compromise arrived at between the parties has been found to be a genuine one.

4. Learned counsel for the petitioners submits that the parties have decided to bury the hatchet and are living peacefully. Learned counsel for the petitioners further submits that continuation of the impugned FIR, cross case and subsequent criminal proceedings arising therefrom, are liable to be quashed in the interest of justice.

5. Having heard the learned counsel for the parties and after going through the record of the case, this Court is of the considered opinion that it is a fit case for exercising the inherent jurisdiction of this Court u/s 482 Cr.P.C., so as to secure the ends of justice. I say so because the parties have arrived at an out of Court settlement by way of compromise (Annexure P-3). The compromise is without any pressure and a genuine one. In such a situation, continuation of the prosecution would result in sheer abuse of process of law.

6. In the case of Madan Mohan Abbot Vs. State of Punjab, , the Apex Court emphasised and advised as under:-

"We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."

7. The view taken by this Court finds support from the recent judgment of the Hon"ble Supreme Court of India in Shiji @ Pappu and others versus Radhika and another, 2012 (1) RCR (criminal) 9 and also from the larger Bench of this Court in Kulwinder Singh and others versus State of Punjab and another reported as 2007 (3) RCR (criminal) 1052. The observations made by the Hon"ble Supreme Court in para 13 of the judgment in Shiji's case (supra), which can be gainfully followed in the present case, read as under:

"It is manifest that simply because an offence is not compoundable u/s 320 IPC is by itself no reason for the High Court to refuse exercise of its power u/s 482 Cr.P.C. 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 u/s 482 Cr.P.C. 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 u/s 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 u/s 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. Having said so, we must hasten to add that the plenitude of the power u/s 482 Cr.P.C. 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 u/s 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 u/s 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."

8. Reverting to the facts of the present case, this Court has satisfied itself that the compromise arrived at between the parties is a genuine one. They have got their statements recorded voluntarily before the learned trial court. In view of the genuine compromise arrived at between the parties and also in view of the report received from the learned trial court, I have no hesitation to conclude that the continuation of the prosecution any further would be nothing but sheer abuse of the process of law. It would result in wastage of valuable time of the Court because no chance of conviction is left.

9. In the totality of the facts and circumstances of the present case, noted above, coupled with the reasons aforementioned and to secure the ends of justice, FIR No. 116 dated 30.6.2009 under Sections 326, 324, 323, 148 and 149 IPC and cross case under Sections 323 and 34 IPC registered at Police Station Sadar, Gurdaspur including the consequential proceedings arising therefrom, are ordered to be quashed only qua the petitioners namely Prabh Dayal (petitioner No. 1), Vija Masih (petitioner No. 2), Pala Masih (petitioner No. 3) Heera Masih (petitioner No. 4), Samaun Masih (petitioner No. 5) and Deepak Masih (petitioner No. 6) in CRM No.M-4112 of 2012 and Johny Masih (petitioner No. 1), Stephon Gill (petitioner No. 2), Rajan (petitioner No. 3) and Danial (petitioner No. 4) in CRM No.M 5267 of 2012, respectively. Instant petitions stand allowed.