

(2023) 02 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 55259 Of 2019 (O&M)

Sikander Yadav & Another

APPELLANT

Vs

State Of Haryana & Others

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 20, 320, 482
Indian Penal Code, 1860 — Section 34, 294, 304A, 307, 326

Citation : (2023) 02 P&H CK 0091

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Ashok K. Jinda, G.S. Dhillon

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

283

23.8.2019

DLF-II, District Gurugram

304-A IPC

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

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

3. After that, the petitioners came up before this Court to quash the FIR, and in the quashing petition, the aggrieved persons have been impleaded as respondents.

4. On 15.12.2022, the aggrieved persons (Respondents no.2 and 3) appeared before the Judicial Magistrate Ist Class, Gurugram and stated that they would have no objection if the court quashes this FIR and consequent proceedings. As per the concerned court's report dated 15.12.2022, the parties consented to the quashing of FIR and consequent proceedings without any threat or coercion.

ANALYSIS & REASONING:

5. The State's counsel has severely opposed this compromise and seeks dismissal of the petition because of the heinous nature of the offence.

6. In the present case, the offense under section 304-A of the Indian Penal Code, 1860 [IPC] is not compoundable under Section 320 of the Code of Criminal Procedure, 1973 [CrPC]. Regarding the quashing of FIR under Section 304-A IPC, it is well settled that FIR cannot be quashed when it relates to death in a roadside accident. The rationale is to curb the ever-increasing accidental deaths because of rash and negligent driving. However, the scope of Section 304-A IPC is not restricted only to accidental road deaths but also to any rash and negligent act. It encompasses the actions taken casually, rashly, and negligently leading to accidental deaths. Thus, when the cause of death is because of a reason other than a roadside accident, the Court must consider the role of the accused and whether his actions were prima facie rash and negligent similar to those under road accident cases. In case the allegations are para-material like those of road accident cases, the FIR should not be quashed; however, when the role lacks mensrea or culpability, there is no reason not to quash the FIR, more so when the FIR for much graver offenses under Sections 307 or 326 IPC can be quashed. Furthermore, Section 320 CrPC provides for compromise with the legal representatives of the deceased when the victim has expired during the pendency. The difference is that in Section 304A IPC cases, the victim expires not during the pendency but because of the accident. Another angle that cannot be lost is that when the deceased's family absolves the accused of any negligence or rash act, it would be impossible for the prosecution to succeed during the trial. Thus, quashing of cases under Section 304-A IPC, other than roadside accidents, can be quashed depending upon the facts and circumstances of each case, the role assigned to the accused, mensrea, and the guilt of the such person.

7. In the present case, petitioner no. 1 is the civil contractor, and 2nd is the property's owner. The deceased was staying with her husband in the under-construction house of 2nd petitioner. At around 11-00 A.M., i.e., in broad

daylight, when she was cleaning the area, she removed the electrical wire from the motor of a water pump. Since the surface below was wet, the moment she touched the wire, she got an electric shock, which led to her death. The affidavit regarding the compromise of her husband specifically stated that neither the owner of the plot nor the contractor was responsible for the said accident in any manner whatsoever. In fact, after the death, both contributed financially and emotionally by helping them. They also spent the entire money on her treatment and handed over the deceased's husband a sum of Rs Three lakhs as compensation. The victim's husband specifically stated that neither Santosh, the plot owner nor Sikander, the contractor was responsible for the said accident in any manner. A perusal of these facts points out that the accident occurred in broad daylight, and as an adult, the victim should have been more careful while touching the electric wire in an under-construction site and should have stayed away from the wire and electric pump. The undisputed position is that it was not stated that the plot owner had had such a pump affixed. There is also no evidence that the contractor had done the pump's wiring and that the contractor had done it himself without hiring any trained electrician. Given the above, it is not a case where the acts of the plot's owner or the contractor can be termed as rash or negligent.

8. It shall be appropriate to refer to the relevant portions of compromise deed, which is extracted as follows: -

"3. That on 23-8-2019 at under construction house No. M-9/33, DLF Phase-2, Gurugram, I and my wife Ruby Devi were residing at this very plot. That my wife Ruby Devi was doing cleaning work at about 11 o'clock that she was going to remove mistakenly the wire of water motor on which my brother in law Gopal Podaur tried to stop her but due to distance, she could not hear his voice and she mistakenly touched the electric wire and due to water below she got electric shock and thereafter she died in the hospital.

4. That in the above said incident the mistake and carelessness was on part of my wife. In this there is mistake of no one else.

5. That in this there is no mistake of Plot owner Santosh and contractor Sikander nor is there any carelessness on their part.

6. That being good persons Santosh Ji and Sikander gave us financial, mental, and physical help and met all the hospital expenses and gave Rs. 3 Lakhs as financial help has been received by me.

7. That on the day of occurrence, we were called to police station and got our signatures on some papers, we do not know what was written on them. Later on came to know that a case No. 283 dated 23-08-2019 u/s 304-A IPC has been registered.

8. That we are satisfied in every manner and we do not want any action and neither was there any mistake of Santosh and Sikander This accident had

happened due to mistake and carelessness sister.”

9. The injured and all the accused had appeared before the Court of Judicial Magistrate Ist Class, Gurugram and had stated that they had entered into a compromise. The parties belong to the same village and must be living there for generations and might continue to live, who knows for how long. In the closely-knit village community, when the parties have buried their hatchets, the continuation of criminal proceedings will not advance the reformatory purposes of jurisprudence just for the sake of deterrence.

10. 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 the conviction, sentence and all previous proceedings is justified to secure the ends of justice.

11. 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.

12. In *The state of Madhya Pradesh v. Kalyan Singh*, 2019 (4) SCC 268, Hon'ble Supreme Court holds,

[3.1] It is required to be noted that the original Accused was facing the criminal proceedings under Sections 307, 294 read with Section 34 of the IPC. It is not in dispute that as per Section 20 of the Cr.PC offences under Sections 307, 294 read with Section 34 of the IPC are non-compoundable. It is also required to be noted that the allegations in the complaint for the offences under Sections 307, 294 read with Section 34 of the IPC are, as such, very serious. It is alleged that the accused fired twice on the complainant by a country-made pistol. From the material on record, it appears that one of the accused persons was reported to be a hardcore criminal having criminal antecedents. Be that as it may, the fact remains that the accused was facing the criminal proceedings for the offences under Sections 307, 294 read with Section 34 of the IPC and that the offences under these sections are not non-compoundable offences and, looking to the serious allegations against the accused, we are of the opinion that the High Court has committed a grave error in quashing the criminal proceedings for the offences under Sections 307, 294 read with Section 34 of the IPC solely on the ground that the original Complainant and the accused have settled the dispute. At this stage, the decision of this Court in the case of *Gulab Das and Ors. V. State of M. P.*, 2011 12 Scale 625 is required to be referred to. In the said decision, this Court has specifically observed and held that, despite any settlement between the Complainant on the one hand and the accused on the other, the criminal proceedings for the offences under Section 307 of the IPC cannot be quashed, as the offence under Section 307 is a non-compoundable offence. Under the circumstance, the impugned judgment and order passed by the High Court quashing the criminal proceedings against the original Accused for the offences under Sections 307, 294 read with Section 34 of the IPC cannot be sustained and the same deserves to be quashed and set aside.

[4] In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order passed by the High Court in Miscellaneous Criminal Case No. 6075 of 2013 is hereby quashed and set aside.

13. In *The State of Madhya Pradesh v. Laxmi Narayan & others*, 2019 (5) SCC 688, a two-member bench of Hon'ble Supreme Court holds,

[13] Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character,

particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (*supra*) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

[14] Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC

mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused.

14. 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 postconviction, 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."

15. 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.

16. 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.

17. 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."

18. 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.

19. 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 petitioners are accordingly discharged.

Petition allowed in the terms mentioned above. All pending application(s), if any, stand disposed of.