
(2011) 03 P&H CK 0199

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-36203 of 2010

Surender Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Arms Act, 1959 — Section 25, 34

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 438, 482

Citation : (2011) 03 P&H CK 0199

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—The present petition has been filed on behalf of Petitioners Surender Singh, Jai Parkash and Narender Kumar for quashing of FIR No. 389 dated 9.10.2010 under Sections 307/34 read with Section 25/54/59 of the Arms Act registered at Police Station Sadar Gurgaon and all subsequent proceedings arising therefrom on the basis of compromise annexed as Annexure P-2 with the petition.

2. Notice of motion was issued on 9th December, 2010. Vide order dated 31st January, 2011, parties were directed to appear before the Illaqa Magistrate on 11th February, 2011 for recording their statements with regard to compromise and Illaqa Magistrate was also directed to record the statements of both the parties to its satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. It was also directed to send a report along with statements of the parties with regard to validity or otherwise of the compromise effected between the parties. In compliance of the directions dated 31st January, 2011, report along with statements of the parties have been received from the Additional Chief Judicial Magistrate, Gurgaon which are on record. In the report, it has been stated that the parties were present before him and their statements were recorded. The statements were made without any

pressure or coercion and as per their will. In the statement of the complainant it has been mentioned that the complainant has no objection in quashing of the FIR.

3. Learned Counsel for the Petitioners also submits that the compromise effected between the parties is genuine and the Petitioners are not habitual offender as no case is there against them.

4. Mr. Mor learned Counsel for the State on instructions from ASI Rm Phal also affirms that no other case is there against the Petitioners.

5. After hearing learned Counsel for the parties, I am of the considered view that continuation of impugned criminal proceedings between the parties would be an exercise in futility. The complainant himself does not want to pursue these proceedings and it shall be merely a formality and sheer wastage of precious time of the Court as complainant would not support the case of prosecution in view of compromise between the parties. It would be in the interest of the parties as well as in the large interest of the society and to maintain peace and harmony and in order to save both the families from avoidable litigation that the compromise arrived at between them is accepted by this Court.

6. It has been observed by Hon''ble the Apex Court in Mrs. Shakuntala Sawhney Vs. Mrs. Kaushalya Sawhney and Others, that "the finest Hour of Justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion." The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. Relying on the views adopted by the Hon''ble Supreme Court, the Five Judges Bench of this Court also observed in Kulwinder Singh v. State of Punjab 2007 (3) R.C.R. (Cri) 1052 that compounding of offence which are not compoundable u/s 320(9) Code of Criminal Procedure, offence non-compoundable but parties entering into compromise, High Court has the power u/s 482 Code of Criminal Procedure to allow the compounding of non-compoundable offences and quash the prosecution where the High Court felt that the same was required to prevent the abuse of the process of Court or to otherwise secure the ends of justice.

6. While dealing with issue of quashing of FIR on the basis of compromise a Bench consisting of Five Hon''ble Judges of this Court in Kulwinder Singh's case (supra) while approving minority view in Dharambir v. State of Haryana 2005 (3) RCR (Cri) 426 : 2005(2) Apex Cri 424 : 2005 (2) LH 723 (P&H) (FB), opined as under:

To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power u/s 482, of the Code of Criminal Procedure. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e, "to prevent

abuse of the process of any Court" or " to secure the ends of justice.

7. No embargo, be in the shape of Section 320(9) Code of Criminal Procedure or any other such curtailment, can whittle down the power u/s 438 Code of Criminal Procedure.

8. The compromise, in a modern society, is the sine qua non of harmony and orderly behavior. It is the soul of justice and if the power u/s 482 Code of Criminal Procedure is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice." Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers u/s 482 Code of Criminal Procedure in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

9. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Code of Criminal Procedure which can affect the inherent power of this Court u/s 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar u/s 320 Code of Criminal Procedure, in order to prevent the abuse of law and to secure the ends of justice.

10. The power u/s 482 Code of Criminal Procedure is to be exercised Ex-Debita Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined parameters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power u/s 482 Code of Criminal Procedure has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

11. Compromise in modern society is the sine qua non of harmony and orderly behavior. As observed by Krishna Iyer J., the finest hour of justice arrives propitiously when parties despite falling apart, bury the hatchet and weave a sense of fellowship of reunion. Inherent power of the Court u/s 482 Code of Criminal Procedure is not limited to matrimonial cases alone. The Court has wide powers to quash the proceedings even in non-compoundable offences in order to

prevent abuse of process of law and to secure ends of justice, notwithstanding bar u/s 320 Code of Criminal Procedure. Exercise of power in a given situation will depend on facts of each case. The duty of the Court is not only to decide a list between the parties after a protracted litigation but it is a vital and extraordinary instrument to maintain and control social order. Resolution of dispute by way of compromise between two warring groups should be encouraged unless such compromise is abhorrent to lawful composition of society or would promote savagery, as held in Kulwinder Singh's case (supra).

12. For the reasons recorded above and having regard to the principles laid down by the Five-Judges Bench of this Court in case of Kulwinder Singh's case (supra), this petition is allowed and FIR No. 389 dated 9.10.2010 under Sections 307/34 read with Section 25/54/59 of the Arms Act registered at Police Station Sadar Gurgaon as well as all subsequent proceedings arising therefrom are quashed.