

(2018) 04 P&H CK 0202
In the Punjab And Haryana At Chandigarh
Case No : CRM-M No.24895 of 2017

Tanu Sharma and others	Vs	APPELLANT
State of Punjab and another		RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 482, 397
Constitution Of India, 1950 — Article 227
Prevention of Corruption Act, 1988

Citation : (2018) 04 P&H CK 0202

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Judgement

RAJ MOHAN SINGH, J. (ORAL)

{1}. Prayer in this petition under Section 482 Cr.P.C. is for quashing of FIR No.226 dated 24.12.2016 registered under Section 420 IPC and Section

13 of Punjab Prevention of Human Smuggling Act at Police Station Division No.C, Amritsar as well as all the subsequent proceedings arising

therefrom on the basis of compromise.

{2}. Learned counsel for the petitioners submitted that total amount of Rs.4,35,000/- has been paid by the petitioners in terms of compromise.

{3}. Both the parties were directed to appear before the Illaqa Magistrate/trial Court for recording their statements in respect of genuineness and

voluntary nature of the compromise vide order dated 28.09.2017. Both the parties have appeared before the Judicial Magistrate First Class, Amritsar

on 03.11.2017 and have deposed in the context of validity of compromise in question. According to the statements of the parties, no accused is

absconding, nor anyone has been declared as proclaimed offender.

{4}. On the basis of depositions made by the parties, Judicial Magistrate First Class, Amritsar has also endorsed the factum of compromise in the report dated 08.11.2017 holding the same to be genuine, without any pressure, coercion and undue influence.

{5}. However, learned State Counsel on instructions from ASI Sarabjit Singh submitted that one of the accused namely Amit Aggarwal has not been arrested so far and proceedings qua him in terms of proclamation under Section 82 Cr.P.C are pending.

{6}. Learned counsel for the petitioners relied upon Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat and another, 2012 (4) R.C.R.

(Criminal) 589 and contended that the criminal proceedings in an FIR can be quashed at the instance of one of the accused on the basis of compromise.

{7}. Learned counsel for the petitioners further relied upon Parambir Singh Gill Vs. Malkiat Kaur, 2010 (1) R.C.R.(Criminal) 256 and the decision rendered by this Court in CRM-M No. 18632 of 2014 titled Ashok Kumar Garg and another Vs. State of Punjab and others, decided on 07.08.2015, on the aforesaid proposition.

{8}. In view of the aforesaid, I proceeded to decide this case on behalf of the petitioners.

{9}. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as

on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due

consideration of judgments in Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47, Bhajan Lal vs. State of Haryana and others,

AIR 1992 Supreme Court 604 and State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489, has summed up the

controversy in State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and others, 2003(2) RCR (Cr.) 860 (SC). The legal

position summed up in the said judgment is in the following manner:-

â??Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals

throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State

Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey

the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an

interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a

source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of

judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their

authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional

circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to

circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under

Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal

Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some

other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate

powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the

process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very

sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally

exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the

cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision

in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar

of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.â??

{10}. Full Bench of this Court in Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Cr.) 1052 considered the scope of

powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse

of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be

exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under

Section 482 Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised Ex-Debita, justitia to prevent abuse of process of Court.

{11}. In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature.

Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of commercial, financial, mercantile

and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the

same by entering into compromise. In Gian Singh vs. State of Punjab and another 2012(4) RCR (Cr.) 543, the Hon'ble Supreme Court considered

necessary imports of all previous precedents and observed in the following manner:-

â??57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding

or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the

offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the

guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to

quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the

facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due

regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be

fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and

have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like

Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for

quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on

different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like

transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in

nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because

of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put

accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete

settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of

justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite

settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to

an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal

proceeding.â??

{12}. Taking into consideration totality of facts and circumstances, this Court is of the view that the case can be considered for quashing of FIR along

with subsequent proceedings arising therefrom on the basis of compromise.

Resultantly, FIR No.226 dated 24.12.2016 registered under Section 420 IPC and Section 13 of Punjab Prevention of Human Smuggling Act at Police

Station Division No.C, Amritsar and all the subsequent proceedings arising

therefrom are hereby quashed qua the petitioners only.