281 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M No.34648 of 2023 (O&M)
Date of decision : 13.12.2023

Kulwinder Singh and others ..... Petitioners

versus

State of Punjab & anr. ..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajeev K.Kapila, Advocate
for the petitioners.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. Sandeep Godara, Advocate for
Mr. Rahul Garg, Advocate
for respondent No.2.

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PANKAJ JAIN, J. (Oral)

1 By way of present petition, the petitioners are seeking quashing of FIR No.0075 dated 01.03.2023, registered for offences punishable under Sections 323, 324, 365, 34 of the Indian Penal Code, 1860 and Sections 325, 326 of the IPC added later on, at Police Station Model Town, District Hoshiarpur on the basis of compromise.

2 On 15.09.2023, the following order was passed:-

> *The present petition has been moved invoking jurisdiction of this Court under Section 482 Cr.P.C. by the petitioners seeking quashing of FIR No.0075 dated 01.03.2023, registered for offences punishable under Sections 323, 324, 365, 34 of the Indian Penal Code, 1860 and Sections 325, 326 of the IPC added later on, at Police Station Model Town, District Hoshiarpur and all subsequent proceedings arising thereto on the basis of compromise.*

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Counsel for the parties are ad idem that the matter already stands compromised vide Compromise Annexure P-2. .

In view of the above, the parties are directed to appear before learned Trial Court/Duty Magistrate on 16.09.2023. On their doing so, the learned Trial Court/Duty Magistrate shall record their statements and furnish its report to this Court by the next date of hearing on the following aspects:-

1. Number of persons arrayed as accused in the FIR.

2. Whether any accused is proclaimed offender?

3. Whether the compromise is genuine, voluntary and without any coercion or undue influence?

4. Whether the accused persons are involved in any other case or not?

5. The Trial Court is also directed to record the statement of the Investigating Officer as to how many victims/ complainants are there in the FIR.

A copy of the report be also sent to the Registrar Judicial of this Court.

Needless to say that in case for any reason the statements are not recorded on the aforesaid date, the learned Trial Court/Duty Magistrate shall be at liberty to call the parties on any other date but not later than a week thereafter.

For awaiting report, list on 13.12.2023.

3 Pursuant to the aforesaid order, report from Judicial Magistrate 1st Class, Hoshiarpur dated 18.11.2023 has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

"In the present FIR no accused persons has been declared as proclaimed person/offender. However, P.O. proceeding are pending against accused Kulwinder Singh and Davinder Singh.

1. As per statement of Investigating Officer ASI Charanjit Singh, there are four persons arrayed as accused in the present FIR.

2. As per statement of Investigating Officer, no accused person has been declared as Proclaimed Person/Offender, however, PO

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> *proceedings are pending against accused Kulwinder Singh and Dalvinder Singh.*
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> *3. As per statement of the parties the compromise seems to be genuine, voluntarily, out of free will of the parties.*
>
> *4. As per statement of Investigating Officer, accused Jaskaran Singh is involved in another FIR bearing FIR No.244 dated 11.10.2021 under Section 323, 324, 148, 149, 427 of IPC, PS Model Town, Hoshiarpur. However, no case/FIR pending against accused Gagandeep Singh and Kulwinder Singh.*
>
> *5. Statement of Investigating Officer, is recorded and as per his statement there is only one complainant/victim in the present FIR namely Parshant Singh."*

4 As per the FIR there is one another accused person-Davinder Singh. However, the compromise has only been effected with accused-petitioners.

5 Mr. Sandeep Godara, Advocate for Mr. Raul Garg, Advocate appears for respondent No.2 and admits the fact of parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto against the petitioners are quashed.

6 Similarly learned State counsel has stated no objection in case the FIR is quashed based upon the compromise.

7 I have heard learned counsel for the parties and have carefully gone through the records of the case.

8 This Court and Apex Court has repeatedly dealt with the issue of exercise of jurisdiction under Section 482 Cr.P.C. to quash proceedings in non-compoundable offences in the cases of ***Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, State of Madhya***

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Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688, Kulwinder Singh & others vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052 *and* ***Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of 2012 decided on 29th of September, 2021).*** The proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

> *(a) Power u/s 482 Cr.P.C. vested with this Court is much wider and is unaffected by Section 320 of the Code.*
>
> *(b) However, wider the power greater the caution.*
>
> *(c) The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.*
>
> *(d) The said power is not to be exercised in the prosecutions involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.*
>
> *(e) Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High Court would not refuse to quash FIR under Section 307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.*
>
> *(f) Such exercise at the hands of High Court would be permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter*

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is still under investigation.

(g) While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.

9 Thus, keeping in view the aforesaid facts and circumstances, this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested u/s 482 Cr.P.C. to quash the FIR as :-

*(i) The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra) i.e. heinous offence.*

(ii) The offences alleged are of private nature.

(iii) The parties have compromised.

(iv) As per the report received the compromise is said to be voluntary in its nature.

(v) Complainant/victim is reported to have entered into compromise on his own volition.

10 Since the parties are *ad idem* that the compromise/settlement has to be read strictly *inter se* between the parties to the present petition and the complainant wants to pursue prosecution of rest of accused and it is only accused-petitioners who have approached this Court by way of present petition, the present petition is being entertained and allowed *qua* them only.

11 The question raised by State counsel as to whether the FIR can be quashed in part or not already stands answered by Apex Court in ***'Lovely Salhotra and another vs. State (NCT of Delhi)'*** *reported as* ***(2018) 12 SCC 391,*** wherein it was observed as under:-

"xx xx xx

We have taken into account the facts of the matter in question

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> *as it appears to us that no cognizable offence is made out against the appellants – herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants - herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 – herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie."*

12 Consequently, the petition is allowed. FIR No.0075 dated 01.03.2023, registered for offences punishable under Sections 323, 324, 365, 34 of the Indian Penal Code, 1860 and Sections 325, 326 of the IPC added later on, at Police Station Model Town, District Hoshiarpur and all proceedings arising therefrom, are, hereby, quashed *qua* the petitioners.

(PANKAJ JAIN)
JUDGE

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Whether speaking/reasoned Yes

Whether Reportable : No

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