(2014) 08 P&H CK 0299

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-M-14558 and 14557-2014

Vipin Sehgal		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Aug. 5, 2014

Acts Referred:

- Constitution of India, 1950 - Article 142
- Criminal Procedure Code, 1973 (CrPC) - Section 320, 320(9), 482
- Hindu Marriage Act, 1955 - Section 13B
- Penal Code, 1860 (IPC) - Section 120B, 312, 313, 323, 354

Hon'ble Judges: Mahavir Singh Chauhan, J

Bench: Single Bench

Advocate: Rakesh Gupta, Advocate for the Appellant; Suvir Sidhu, Deputy Advocate General, Berjeshwar S. Jaswal, Advocate for the Respondent

Final Decision: Allowed

Judgement

Mahavir Singh Chauhan, J.
This order shall dispose of the aforesaid two petitions which have been filed for quashing of FIR on the basis of compromise. Since both the petitions though pertain to two different FIRs but dispute in both FIRs is same between parties, as such they are being disposed of by this common order being passed in CRM-M-14558 of 2014.

2. By way of CRM-M-14558 of 2014 u/s 482 of the Code of Criminal Procedure, 1973 (for brevity, "the Code"), petitioners, the accused in FIR No. 57 dated 09.02.2013 (Annexure P-1) recorded, under Sections 406/498A/312/313/323/506/120B of the Indian Penal Code, 1860 (for short, "IPC"), at Police Station, Sector 5, Panchkula, seek quashing of the aforesaid FIR by stating that the matter has been amicably settled between them and complainant/respondent No. 2, vide settlement/agreement deed dated 09.04.2014 (Annexure P-3).

3. Vide CRM-M-14557 of 2014, the petitioner-Vipin Sehgal, has sought quashing of FIR No. 142 dated 21.03.2014, recorded under Sections 354/506/120B, IPC, at Police Station, Sector 5, Panchkula.

4. Vide order dated 20.05.2014, learned Chief Judicial Magistrate, Panchkula, was asked to record statements of the parties concerned to find out if the compromise is outcome of free will and consent of the parties and is free from any undue influence/pressure/coercion. Learned Chief Judicial Magistrate, Panchkula has submitted a report dated 09.06.2014 affirming that the compromise is outcome of free will and consent of the parties and is free from undue influence/pressure/coercion.

5. FIR (Annexure P-1) was recorded on the statement of Isha Sehgal, respondent No. 2, levelling allegations of demand of dowry and cruelty against the petitioners.

6. As per settlement/agreement dated 09.04.2014 (Annexure P-3) both the parties have decided to resolve their dispute. Both the parties have agreed to live separately as they have decided to file divorce petition by way of mutual consent u/s 13B of the Hindu Marriage Act, 1955.

7. State Counsel also does not object to acceptance of these petitions and quashing of the afore-said FIR.

8. In B.S. Joshi and Others Vs. State of Haryana and Another, the husband was one of the appellants while the wife was Respondent No. 2 in the appeal before the Hon''ble Supreme Court. They were living separately for quite some time. An FIR was registered under Sections 498A/323 and 406, IPC at the instance of the wife. When the criminal case registered at the instance of the wife was pending, the dispute between the husband and wife and their family members was settled. Wife filed an affidavit that her disputes with the husband and the other members of his family had been finally settled and she and her husband had agreed for mutual divorce. Based on the said affidavit, the matter was taken to the High Court by both the parties and they jointly prayed for quashing the criminal proceedings launched against the husband and his family members on the basis of the FIR registered at the wife''s instance under Sections 498A and 406, IPC. The High Court dismissed the petition for quashing the FIR as, in its view, the offences under Sections 498A and 406, IPC were non-compoundable and the inherent powers u/s 482 of the Code could not be invoked to by-pass Section 320 of the Code. It is from this order that the matter reached the Hon''ble Supreme Court and the Apex Court held that the High Court in exercise of its inherent powers could quash criminal proceedings or FIR or complaint and Section 320 of the Code did not limit or affect the powers u/s 482 of the Code and held as under:

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband

and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code.

9. Impressing upon the courts to promote settlements in matrimonial cases, Hon''ble Supreme Court of India in Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another, (decided On: 15.03.2013), ruled as under:

11. The inherent powers of the High Court u/s 482 of the Code are wide and unfettered. In B.S. Joshi (supra), this Court has upheld the powers of the High Court u/s 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

12. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

13. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power u/s 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of

which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

14. In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court u/s 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.C.R.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore.

10. Reference may also be made to a Five-Judges Bench decision of this Court in Kulwinder Singh and Others Vs. State of Punjab and Another, wherein it has been held as under:

27. 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. No embargo, be in the shape of Section 320(9) of the Criminal Procedure Code, or any other such curtailment, can whittle down the power u/s 482 of the Criminal Procedure Code.

28. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power u/s 482 of the Criminal Procedure Code 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 of the Criminal Procedure Code 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.

29. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Criminal Procedure Code 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 of the Criminal Procedure Code, in order to prevent the abuse of law and to secure the ends of justice.

30. The power u/s 482 of the Criminal Procedure Code is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters 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 of the Criminal Procedure Code 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 a 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. It may also be of benefit to extract from Gian Singh Vs. State of Punjab and Another, following observations of the Hon''ble Supreme Court of India:

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 u/s 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 predominatingly 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.

12. It is anybody''s guess that the parties having entered a compromise, possibility of the trial resulting into conviction of the accused is remote and bleak and that being so continuation of criminal proceedings would visit the accused with great oppression, prejudice and extreme injustice. Rather it would be unfair and contrary to the interest of justice, or say abuse of the process of the Court, if the criminal proceedings are allowed to continue. Ends of justice would be met only if the criminal proceedings are put to an end because this would allow the parties to translate their desire to live in peace into reality. The only consideration for the compromise reached between the parties seems to be their desire to bury the hatchet for all times to come. The compromise is also found to be in the interest of public at large, for, it will add to the peace of the society and will promote peaceful co-existence. The Courts are bound to 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 the 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.

13. In the consequence, I accept both the petitions, quash the FIRs in question along with proceedings arising therefrom and discharge the petitioners/accused from the proceedings.

14. It is, however, made clear to the parties that in case of either of the party resiling from the compromise, the aggrieved party shall be at liberty to get revived the relevant petition out of these two petitions.