

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No. M-40769 of 2014

Date of Decision : June 2, 2016

Baldev Singh Petitioner

VERSUS

State of Punjab & another Respondents

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MRS. JUSTICE LISA GILL

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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Present: Mr. Sumeet Puri, Advocate
for the petitioner.

Ms. Diya Sodhi, Advocate for
Mr. Jasjit Singh Bedi, Amicus Curiae

Mr. Gaurav Garg Dhuriwala, DAG, Punjab.

Mr. Anil Mehta, DAG, Haryana.

Mr. A.S.Virk, Addl. P.P. for U.T. Chandigarh.

Mr. Harsh Manocha, Advocate for
Mr. Ajay Pal Singh, Advocate
for respondent No.2.

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LISA GILL, J.

This petition has been filed for quashing of FIR No. 173 dated
11.12.2013 under Sections 279, 304-A, 427 IPC registered at Police Station
Sadar Sangrur as well as subsequent proceedings on the basis of

compromise/settlement arrived at between the accused petitioner with respondent No.2 who is brother of the deceased-Balbir Singh. When the learned Single Judge was seized of the matter, it was felt with reference to the judgment of the Hon'ble Supreme Court in ***Gian Singh v. State of Punjab and another*** 2012 (4) R.C.R. (Criminal) 543 that the offence under Section 304-A IPC neither falls in the category of cases which cannot be quashed on the basis of settlement nor the ones which can be so allowed. The question formulated for consideration of a larger Bench was whether the crime registered under Section 304-A IPC can be quashed on the basis of compromise arrived at by the legal heir/legal representative of the victim/deceased with the offender. Relevant part of order dated 28.11.2014 reads as under:-

“The Hon'ble Supreme Court of India in the celebrated judgment *Gian Singh Vs. State of Punjab and another*, 2012(4) RCR (Criminal) 543 has laid down certain tests which requires attention of the High Court while exercising jurisdiction under Section 482 of the Code of Criminal Procedure for quashing of criminal proceedings on the basis of compromise. In para 54, it has been held that :-

“.....In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which

overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

In my considered opinion, offence under Section 304-A IPC neither falls in that category of cases which cannot be quashed on the basis of settlement nor the ones which can be so allowed. This apart, real victim of the crime under Section 304-A IPC is no longer available for entering into any such settlement with the accused/offender. Therefore, the matter is required to be placed before a larger bench for decision:

Whether the crime registered under Section 304-A IPC can be quashed on the basis of compromise arrived at by the legal heirs/legal representatives of the victim (deceased) with the offender.”

The matter was thus placed before the Division Bench for consideration. Notice was issued to the State of Haryana as well as Union

Territory of Chandigarh on 26.11.2015 as it was felt that the issues involved would necessarily require consideration of their view point as well. Despite opportunity, no response is forthcoming from the Union Territory of Chandigarh whereas response has been filed on behalf of the State of Haryana. Reply to the petition has been filed by the State of Punjab. Arguments have been addressed by the learned counsel.

The exercise of plenary power to quash proceedings under Section 482 Cr.P.C. is not in doubt but the question for consideration is whether settlement/compromise arrived at between the accused and the legal heirs/representatives of the person who has lost his life in the unfortunate accident by itself can form the basis for quashing of FIR/criminal proceedings against the accused.

Section 304-A IPC is reproduced hereunder:-

*“304A. **Causing death by negligence.**—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]”*

Offence under Section 304-A is admittedly not covered under the list of compoundable offences under Section 320 Cr.P.C. either by the parties themselves or with the permission of the Court.

It is submitted by learned counsel appearing for the amicus curiae that a “victim” as defined in Section 2(wa) Cr. P.C. includes a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir. Reference was made to a

Full Bench decision of this Court in *M/s. Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. and others*, 2013(2) R.C.R. (Criminal) 1005 to argue that the right of appeal against acquittal is provided to the legal heir of the victim as defined in Section 2(wa) Cr.P.C. While referring to the provisions of Section 357-A which deals with the Victim Compensation Scheme, it is submitted that the legal representatives or legal heirs of the victim are entitled to receive compensation. Therefore, on this analogy the legal heir or representative of the deceased is competent to compound an offence or enter into a compromise with the accused.

It is argued that there is a complete absence of *mens rea* or intention to commit an offence under Section 304-A IPC, thus rendering it to be an offence in the nature of a private dispute. Therefore, once a compromise has been arrived at between the accused and the legal representatives of the deceased there can be no bar to the quashing of the criminal proceedings against the accused by this Court in exercise of powers under Section 482 Cr. P.C. and for the additional reason that continuance of the trial could be a futile exercise with the chances of conviction being absolutely bleak.

While referring to the judgment of the Hon'ble Supreme Court in *Gian Singh's case (supra)* it is contended that no precise or inflexible guidelines have been laid down for exercise of power under Section 482 Cr.P.C. Keeping in view the fact that the imprisonment provided for an offence punishable under Section 304-A IPC is merely two years or fine or both and the offence, triable by a Magistrate, is a bailable one, coupled with the fact that there is no intention of committing any injury or loss to anyone it is definitely not a heinous crime. Once an offence under Section

307 IPC, which is undoubtedly a serious and grave offence can be quashed on the basis of a settlement in given situations, there should be no bar in permitting the quashing of proceedings under Section 304-A solely on the basis of a settlement between the parties. It is, thus, urged that the proceedings under Section 304-A IPC should be permitted to be quashed on the basis of a settlement or compromise arrived at between the accused and the legal representatives of the deceased.

Learned counsel for the State of Punjab, however, submits that the offence punishable under Section 304-A IPC cannot be termed to be an offence private in nature. It is a serious offence which impacts the fabric of society. The offence in question is non-compoundable. The victim in this case is obviously not available, therefore, it would not be in the fitness of things to permit quashing of criminal proceedings under Section 304-A IPC on the basis of settlement as suggested above.

On behalf of the State of Haryana, it is submitted that though quashing of criminal proceedings under Section 482 Cr. P.C. is distinguishable from the power of the Court to compound offence under Section 320 Cr. P.C. in as much as the power under Section 482 Cr. P.C. is plenary and very wide but at the same time such power would be exercised sparingly with the guiding factor being to secure the ends of justice or to prevent abuse of the process of Court. Criminal process involving heinous and serious offences are not private in nature. It is further argued that the stage at which a settlement is arrived at between the parties is extremely crucial. In cases where prosecution evidence is almost complete or stands concluded or where conviction is already recorded by the trial Court, a mere settlement between the parties should not be a ground to quash the

proceedings/acquit the offender. Where the matter is at a nascent stage, i.e. at the stage of investigation or even where evidence is at an infancy stage after framing of a charge, this Court may intervene to quash the proceedings, but that too after a *prima facie* evaluation of the material on record.

We have heard learned counsel for the parties and have considered the submissions made by the counsel.

Undoubtedly, there is a distinction between the power of the Court to compound an offence under Section 320 Cr. P.C. and quashing of criminal proceedings in exercise of power under Section 482 Cr. P.C. In *Gian Singh's case (supra)* the Hon'ble Supreme Court has observed as under:-

“Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of

power although the ultimate consequence may be acquittal or dismissal of indictment.” (emphasis added)

In *Gian Singh's case (supra)* the question was regarding quashing of an offence punishable under Section 307 IPC on the basis of settlement between the parties. It was observed that the offence under Section 307 IPC would fall in the category of heinous and serious offences and is generally treated as a crime against society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of 307 IPC in the FIR or the charge is framed under the said provision. It would be open to the court to find out whether there is sufficient evidence to prove the charge under Section 307 IPC. It would be open to the High Court to formulate a *prima facie* analysis.

In *Narinder Singh and others v. State of Punjab and another* 2014 (2) R.C.R. (Criminal) 482 which also deals with a matter pertaining to an offence under Section 307 IPC, it is observed as under:-

“Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case

finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

The offence under Section 304-A IPC presents a situation where the victim has lost his life in an accident. The legal representatives of the deceased may enter into a compromise with the accused for considerations best known to them, but to say that an offence under Section 304-A is private in nature is wholly incorrect. It is an offence which impacts society as a whole with its ripples casting their net far and wide, permeating to the very core.

While dealing with the question of reduction of sentence imposed under Section 304-A on account of compensation paid to the legal representatives of the deceased it has been observed by the Hon'ble Supreme Court in ***State of Punjab v. Saurabh Bakshi***, Criminal Appeal No. 520 of 2015, that there can be no proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim regardless of the gravity of the crime under Section 304-A, there should be a reduction in the sentence imposed. The increase in the number of road accidents where the drivers were totally rash and negligent was noticed. It

was observed that they were driving with youthful enthusiasm as if there were no traffic rules or no discipline of law had come centre stage. Misplaced sympathy while applying the payment of compensation in such cases was decried. Such a mockery of justice would necessarily shatter the faith of public in the judicial system. There should not be an impetus to the nonchalant attitude of drivers who feel that “they are emperors of all they survey”. In a situation where poor felt that their lives are not safe and the pedestrians think of their uncertainty and the civilized persons drove in constant fear but were still apprehensive about the obnoxious attitude of the people who project themselves as larger than life the Hon'ble Supreme Court in immense anguish observed that the law makers should scrutinize, re-look and re-visit the sentencing policy in Section 304-A IPC. It is specifically observed that it is obligatory on the part of the court to see the impact of the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

In *Dalbir Singh v. State of Haryana* 2000(2) R.C.R. (Criminal) 816, it is observed by the Hon'ble Supreme Court that,

*“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. **One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any***

latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic. (Emphasis added)

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, 6 (2000) 5 SCC 821 Page 13 one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can

play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

In the facts and circumstances of the case it would indeed be paradoxical and incorrect to hold that the offence under Section 304-A is private in nature. Its serious impact on society is not subject to understatement. When a person or persons lose their life/lives due to the rash and negligent act of the accused, the question of *mens rea* or intention in such a situation pales into insignificance. The wrong cannot be termed to be private or personal in nature like offences arising out of matrimony, relating to dowry etc., family disputes or criminal cases having overwhelmingly and predominantly a civil flavour like commercial, financial, mercantile, civil or partnership matters.

Another argument addressed vehemently in favour of the proposition is that the legal heirs get adequate compensation in a given situation and a quietus is afforded to needless litigation, as many a times criminal proceedings are initiated solely with a view to seek compensation. There is a basic flaw in this argument which compels us to reject it. To presume that a human life can be allowed to be shattered away due to the rash and negligent act, may be a mindless act or of false bravado or brazenness and thereafter permit its compounding/settlement on the basis of 'just monetary compensation' or any other consideration amounts to nothing but a complete mockery of justice, totally offensive to civilized thought. The question of compensation under the Motor Vehicles Act is a totally separate issue. There can be no question of bartering of a human life in this manner. While being fully conscious of the ground realities of our

society where the victim's family may be in penury and may be beguiled into a compromise due to the harsh realities of life, a stamp of approval over such an activity cannot be afforded by the court.

To say that Courts should not hesitate to intervene in favour of the accused in such cases is indeed a dangerous proposition with a potential to provide an impetus to a proclivity on the part of the drivers to continue with their rash and negligent act buoyed by the thought that they would get away with the crime by affording sufficient compensation to the victim's legal representatives. Once it has been authoritatively held by the Supreme Court that even grant of compensation under Section 357 (3) Cr. P.C. is not to be regarded as a mitigating circumstance to reduce the sentence imposed and neither can it be a substitute for an adequate sentence in all cases, it cannot be held that in cases where the matter is settled with the legal heirs of the deceased by giving adequate compensation, the proceedings should be quashed.

Likewise, to draw an analogy that in cases involving the offence under Section 307 which are of heinous nature, it has been opined by the courts that the factum of a settlement or compromise between the parties can be a guiding factor, is not justified. In the case under Section 304-A the victim is obviously not present to settle the matter. To permit a legal representative or legal heir to compromise or settle the matter is indeed an invitation to a dangerous trend and cannot be permitted. To quash the proceedings under Section 304-A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. Inclusion of the legal representatives in the definition of victim does not

clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation.

However, it is trite to mention that the power of the High Court under Section 482 Cr. P.C. can nevertheless be exercised in appropriate matters where it is felt that a *prima facie* case is not made out in consonance with the settled principles of law. There can indeed be no fetter on this power to act for securing the ends of justice or to prevent the abuse of process of law. However this observation for a moment is not to be construed as taking the possibility of a conviction being bleak due to settlement, to be a relevant factor for quashing the FIR under Section 304-A IPC. Reference is thus answered in the negative as there can be no quashing of an offence registered under Section 304-A and subsequent proceedings, solely on the basis of a compromise arrived at between the legal heirs/representatives of the victim (deceased) and the accused.

The matter be placed before the learned Single Judge for decision accordingly.

June 2, 2016
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(MAHESH GROVER)
JUDGE

(LISA GILL)
JUDGE