IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-35177-2017 (O&M)
Reserved on: 13.09.2024
Date of Pronouncement: 24.09.2024

LAKHVIR SINGH -PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. A.P.S. Deol, Sr. Advocate with
Mr. Karan Kalia, Advocate and
Mr. Vishal R. Lamba, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P. Chahar, Sr. D.A.G., Haryana.

Mr. Sartaj Singh Gill, Sr. D.A.G., Punjab.

Mr. Tarundeep Kumar, Advocate
for the respondents No.2 to 5.

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SURESHWAR THAKUR, J.

1. The hereinafter extracted reference is required to be answered by this Bench:-

> *"Can this Court, especially in view of the ratio of the judgment of the Division Bench in Baldev Singh's case (supra), in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, release a convict on probation of good conduct for any term of his imprisonment, even where the matter has been 'compromised' by the convict with the legal heirs of the deceased, where the convict has been convicted for the commission of an offence punishable under Section 304-A of the IPC and sentenced to any term of imprisonment, when his appeal is still pending before the appellate Court?"*

2. However, before proceeding to render an answer to the above extracted reference, the relevant facts are also required to be set forth.

3. The facts relevant for answering the above extracted reference are that, the alleged penal event took place on 02.11.2013, at about 04:30 p.m., on the roadside leading from Kandhargarh Chhanna to Chhintanwala. The said penal event becomes encapsulated in FIR No.264 dated 03.11.2013, registered under Sections 304-A and 279 of the IPC, at P.S. Dhuri Sadar, District Sangrur. The allegation(s) set forth therein against the petitioner are that, while he was driving with his family in an Alto car, thereby the said Alto car struck against one Jagdish, who was then standing on the roadside. However, the petitioner stopped his car and took the injured Jagdish in his car to Civil Hospital, Dhuri, so that thereins he becomes purveyed medical treatment. However, the said injured succumbed to the injuries in the hospital concerned.

4. On conclusion of the trial, as became entered against the petitioner, the learned trial court concerned, vide order dated 06.08.2016, drew a verdict of conviction against the petitioner, thus for an offence punishable under Section 304-A and also for an offence punishable under Section 279 of the IPC. Moreover, the learned trial court concerned, through drawing an order of sentence of even date, proceeded to impose upon the convict/ petitioner, the hereinafter extracted substantive sentences of imprisonment and of fine amount:-

Under Section	Sentence	Sentence in default of payment of fine
304-A of the IPC	R.I. for 02 years and to pay fine of ₹ 4,000/-	S.I. for 02 months
279 of the IPC	R.I. for 06 months and to pay fine of ₹ 1,000/-	S.I. for 01 month

5. The aggrieved convict/petitioner preferred thereagainst an appeal

bearing No.CRA-4684-2016 before the learned Sessions Court, Sangrur. Significantly, the said criminal appeal is subjudice before the learned Sessions Court, Sangrur.

6. Conspicuously, during the pendency of the criminal appeal (supra), a compromise occurred amongst the convict/petitioner and the legal heirs of the deceased Jagdish, whereby, the convict/petitioner was led to institute the present petition, wherebys he espoused for the quashing of the FIR (supra), besides espoused for setting aside the verdict of conviction and the consequent thereto order of sentence (supra), as became imposed upon him.

7. However, this Court is not required to be entering into the realm appertaining to *"whether the present petition seeking the above reliefs is amenable for being allowed".* Importantly, when the scope and ambit of the reference (supra) does not require the rendition of an answer to *"whether given the verdict of conviction and the consequent thereto sentences becoming imposed upon the conviction/petitioner, vis-a-vis, the charges drawn against him, both under Sections 304-A and 279 of the IPC, thus are required to be annulled on the basis of a compromise, which has occurred amongst the concerned, but, during pendency of an appeal reared by the convict/petitioner against the verdict of conviction and the consequent thereto order of sentence (supra), before the learned Sessions Court, Sangrur"*. Emphasizingly so, as therebys this Court would be travelling beyond the contours of the reference, which is rather required to be answered by this Court.

8. Therefore, in respect of the amenability of endowing the relief(s) appertaining to the quashing of the FIR (supra) and the endowing of

consequent annulment of the verdict (supra), besides endowment of relief qua the consequent thereto sentences (supra), as become imposed upon the convict/petitioner, thus concomitantly being quashed and set aside, but are such espoused reliefs which rather do not fall within the scope of the reference (supra), therebys neither the validity of the said espousal is required to be adjudicated upon, nor the said espousal at this stage requires its becoming favourably endowed upon the convict/petitioner.

9. The trite reference to this Court, which requires the rendition of an answer thereto is *"whether in exercise of the jurisdiction conferred upon this Court by Section 482 of the Cr.P.C., and, whether in the face of an appeal being subjudice before the learned Sessions Court, Sangrur, this Court can favourably exercise the said vested jurisdiction vis-a-vis the petitioner, to the extent that, the petitioner can be ordered to be released on probation of good conduct, in terms of the relevant statutory provisions embodied in the Probation of Offenders Act, 1958 (hereinafter referred to as the 'Probation Act')?"*

For the reasons to be assigned hereinafter, this Court is of the clear view that, the plenitude of jurisdiction invested in this Court, through the provisions embodied in Section 482 of the Cr.P.C., does not yet leverage in the convict/petitioner to claim that, he be released on probation of good conduct, especially when an appeal against his conviction and sentence (supra) is yet subjudice before the learned Sessions Court, Sangrur. Moreover, for the further reasons to be assigned hereinafter, this Court rather does not become coaxed to, in terms of the compromise arrived at between the concerned, thus answer the above extracted reference in favour of the petitioner.

10. Since, as stated (supra), this Court would not be extending the scope and ambit of the instant reference, thus also covering the relief of

quashing of the FIR and all subsequent proceedings emanating therefrom, nor when this Court is required to be favourably endowing the said relief(s) qua the petitioner.

11. Therefore, the judgment rendered by the Hon'ble Apex Court in case titled as **"Ramgopal & Anr. V/s State of Madhya Pradesh",** to which Criminal Appeal No.1489 of 2012 becomes assigned, and, whereins become encapsulated the apposite ratio decidendi, as carried in paragraphs 19 and 20 thereof, paragraphs whereof become extracted hereinafter, though therebys a distinction is drawn between the statutory creations appertaining to the apposite segregations enclosed in Section 320 of the Cr.P.C., respectively appertaining to compoundable and non-compoundable offences. However, yet in the hereinafter paragraphs, the said restrictions created rather under Section 320 of the Cr.P.C., thus against composition of non-compoundable offences , yet become stated therein to be applicable only vis-a-vis the trial court(s) concerned. However, the said statutory restriction, or, statutory fetter becomes expounded therein to be not applicable to a quashing petition becoming instituted before the High Court, thus under Section 482 of the Cr.P.C., nor the said restriction is applicable vis-a-vis the Hon'ble Apex Court, through its employing the mandate embodied in Article 142 of the Constitution. The supra plenitude of jurisdiction invested, respectively in the High Court and in the Apex Court, is stated therein to be beyond the contours of the restrictions embodied in Section 320 of the Cr.P.C. Therefore, though it has been expounded therein that, in case the parameters enshrined thereins become satiated, thereupon, even after the verdict of conviction becoming recorded against the offender concerned, besides when the appeal thereagainst is

subjudice before the appellate court concerned, yet on the basis of a composite compromise arrived at between the concerned, thus the High Court can proceed to allow a petition cast under Section 482 of the Cr.P.C., but yet with a limitation that, implicit credence is not required to be assigned to the apposite compromise, rather a report from the jurisdictional Magistrate is required to be asked for, in respect of the authenticity and voluntariness of the compromise, as becomes drawn between all concerned. If the reference does not cover the said aspect, therefore reiteratedly, this Court is neither required to be delving into the above stated principles of law borne in the verdict (supra), nor also this Court is required to be applying the said principles to the facts at hand.

> *"19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.*
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> *20. Having appraised the afore-stated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us, we are inclined to invoke powers under Article 142 and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that:*
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> *Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature;*

> *Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest;*
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> *Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed;*
>
> *Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s);*
>
> *Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties;*
>
> *Sixthly, since the Appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any ill-will and have no vengeance against each other; and*
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> *Seventhly, the cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age."*

12. The stark uncontested fact, which emerges to the fore, is that, there is a subjudice appeal against the verdict of conviction (supra) and the consequent thereto sentences (supra), as become imposed upon the convict/ petitioner. Though, as stated (supra), this Court is not required to be delving into the *supra,* but the learned counsel for the petitioner insists that, on analogical application of the principles (supra) to the apposite subjudice proceeding, especially when a compromise has occurred between the concerned, therebys even when there is an appeal pending against the verdict of conviction (supra) before the learned Sessions Court, Sangrur. Nonetheless, this Court, in the exercise of the plenary jurisdiction vested in it under Section

482 of the Cr.P.C., can yet proceed to assign qua the petitioner rather the statutory benefit, as envisaged in the Probation Act, thus to the extent that, the convict/petitioner in substitution to the sentences (supra), as became imposed upon him, rather becoming granted the benefit of the statutory contemplations made in the Act (supra).

13. However, again the attempt of the learned counsel for the petitioner to draw leverage, thus on analogical application of the principles (supra), vis-a-vis the facts at hand, is completely miscontextual. Conspicuously, when therebys this Court would be untenably snatching the jurisdiction of the learned Sessions Court, Sangrur, which is seized with the criminal appeal (supra).

14. Moreover, since the peremptory requirement for the passing of an order, for thus releasing the offender on probation of good conduct, but post the verdict of conviction becoming passed upon him, becomes hinged upon the report of the probation officer, besides when the said report is to be requisitioned only by the competent adjudicatory authority, which is but the court of learned Sessions Judge, Sangrur. Moreover, when an objective application of mind is to be made only by the said adjudicatory authority, therebys too, this Court does not deem it fit and appropriate to truncate or snatch the jurisdiction of the learned Sessions Judge, Sangrur.

15. Therefore, without entering into the fact relating to the applicability of the relevant statutory provisions, thus governing the assigning of the benefit of probation of good conduct, to the offender concerned, or, more specifically to the present offender, rather the stark fact qua there being an apposite subjudice appeal before the learned Sessions Court, Sangrur, thus

becomes the paramount consideration for this Court to answer the instant reference against the petitioner.

16. The said criminal appeal is a continuation of the trial. Since, even before the learned trial Judge concerned, thus post the impugned verdict of conviction becoming pronounced against the convict, the convict through his counsel was required to, if permissible under law, make a submission there that, qua rather than his becoming sentenced in the manner (supra), thus the benefit of the relevant statutory provisions embodied in the Probation Act, or, the benefit of the relevant statutory provisions engrafted in the Cr.P.C., thus becoming favourably endowed qua him. However, the convict/petitioner omitted to, at the threshold, thus canvass the said plea, therefore, he appears to abandon or waive the said plea.

17. Now, irrespective qua the said plea becoming waived, and, therebys the convict/petitioner becoming estopped to claim the benefit of the relevant statutory provisions embodied in the Probation Act, or, the benefit of the relevant statutory provisions engrafted in the Cr.P.C., rather on invocation of the principle of estoppel arising from waiver and abandonment (supra), yet the said estoppel is not required to be attracted against the present petitioner, as, therebys it would work extreme hardship to the convict/petitioner.

18. Nonetheless, since the said plea can yet be raised by the convict/petitioner before the learned Sessions Court, Sangrur, wherebeforewhom the criminal appeal (supra) is subjudice. Therefore, since the criminal appeal is a continuation of the trial. Moreover, when all permissible espousable pleas, inclusive of *supra*, are also raisable before the learned Sessions Court, Sangrur. Consequently, since the provisions embodied

in Section 482 of the Cr.P.C., are only residuary provisions, inasmuch as, recourse thereto is permissible only when no other recoursable remedy is available to the aggrieved, therebys when the permissible remedy (supra) is yet available to become recoursed by the convict/petitioner. Therefore, the restriction embodied in Section 482 of the Cr.P.C., qua the jurisdiction invested thereunders in the High Court, becoming not employed, rather when there is an alternative remedy, thus comes to the fore. Resultantly, the relief asked for in the instant petition cannot be favourably endowed to the petitioner.

19. Conspicuously also, the quashing petitions filed under Section 482 of the Cr.P.C., even if become instituted post the makings of verdicts of conviction, thus by the learned trial courts concerned, and even if appeals thereagainst are subjudice before the learned appellate courts concerned, thus can yet subject to the restrictions engrafted in the verdict (supra), become declared to be maintainable, besides reliefs claimed thereunders can become endowed to the convict(s).

20. However, the distinction *inter se* the making of orders over a quashing petition filed under Section 482 of the Cr.P.C., by the aggrieved offender/accused/convict, vis-a-vis, an espousal qua the benefit of the probation of good conduct becoming assigned to him, especially when an appeal against the verdict of conviction is subjudice before the learned appellate court concerned, thus is enclosed in the fine rubric qua:- (a) thus the trial courts concerned becoming disempowered to make an order of composition in respect of non-compoundable offences; (b) however, the said restriction(s), in terms of the verdict (supra), is not to be employed vis-a-vis

the plenitude of jurisdiction vested in the High Court or the Apex Court, through respectively enclosed mandates, respectively in Section 482 of the Cr.P.C., and, in Article 142 of the Constitution. Therefore, therebys when there is no remedy to the offender/accused/convict to seek, in respect of non-compoundable offences, an order of composition from the trial judge concerned, or, from the appellate court wherebeforewhom an appeal against his/her conviction and consequent sentences is subjudice.

20. In sequel, when therebys though the power conferred in the High Court under Section 482 of the Cr.P.C., is a residuary power and is to be exercised only when no alternative remedy is available, but when in wake of the above, the trial judge or the appellate court rather cannot exercise any jurisdiction relating to the making an order of composition of offences, which are statutorily declared to be non-compoundable offences.

21. As but a natural corollary thereto, the above want of residuary/ alternative remedy to the aggrieved offender/accused/convict, thus therebys makes the quashing petition cast under Section 482 of the Cr.P.C., wherein, the composition of non-compoundable offences becomes espoused rather to be maintainable, as thereupons the plenitude of jurisdiction conferred for the purpose (supra), in terms of the verdict (supra), thus cannot be curtailed. However, to the contra, when there is yet jurisdiction in the appellate court concerned to make an order on the offender's/accused's/convict's espousal for his being granted the statutory benefit of probation of good conduct, thereby the availability of the said alternative remedy, to a remedy, as sought for in a petition cast under Section 482 of the Cr.P.C., thus makes the restriction relating to the jurisdiction invested under Section 482 of the Cr.P.C., rather

appertaining to, upon, availability of a residuary/alternative remedy, hence working as an apposite bar, but necessarily adversarialy does surge to the forefront against the present petitioner.

22. Since in the subjudice appeal (supra), the apposite espousal can be canvassed, therebys the availability of espousal of the extant plea, before the learned Sessions Court, Sangrur, but coaxes this Court to conclude that, the said constitutes a yet available recoursable remedy to the convict/petitioner, wherebys the residuary jurisdiction invested in this Court under Section 482 of the Cr.P.C., thus cannot be exercised at this stage.

23. The reference is answered accordingly, leaving liberty to the convict/petitioner to yet raise the plea for quashing of the offence(s) concerned, even though the verdict (supra) and the consequent thereto sentences (supra) have resulted in the rearing of a subjudice appeal thereagainst, before the learned Sessions Court, Sangrur.

24. List before the Roster Bench concerned.

25. This Court records its profound appreciation to the insightful assistance purveyed by all the learned counsels concerned.

26. Moreover, this verdict be placed before the Hon'ble the Chief Justice.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

24.09.2024
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No