

Before Vikas Bahl, J.

SUKHWANT SINGH —*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*

CRR No.172 of 2022

February 07, 2022

Indian Penal Code, 1860—S.420—Cheating—Held, in view of principle as laid down in Damodar S. Prabhu v. Sayed Babalal, AIR 2010 (SC) 1097, the Court has power to set aside judgment of conviction passed against accused on basis of valid compromise—Hence, judgment of conviction and sentence set aside.

Held that, reliance in the above said judgment was also placed upon the judgment of the Hon'ble Supreme Court in Damodar S. Prabhu's case (supra) and thus, as per settled law, this Court has the power to set aside the judgment of conviction passed against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

(Para 23)

P.S. Jammu, Advocate
for the petitioner.

Sarabjit S. Cheema, AAG, Punjab.

Santosh Kumar Yadav, Advocate
for respondent No.2.

VIKAS BAHL, J. (ORAL)

CRM-2297-2022

(1) This is an application filed under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 1541 days in filing the present Criminal Revision.

(2) Notice in the application.

(3) On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and Mr. Santosh Kumar Yadav, Advocate appears on behalf of respondent No.2 and have stated that since the present matter has been compromised,

therefore, they have no objection in case, the present application is allowed.

(4) For the reasons stated in the application and in view of the no objection from the opposite side, delay of 1541 days in filing the present Criminal Revision is condoned.

(5) Application is allowed.

Main case

(6) Challenge in the present Criminal Revision is to the judgment and order of sentence dated 06.04.2015 vide which the present petitioner was convicted by the Judicial Magistrate Ist Class, Gidderbaha, District Sri Muktsar Sahib under Section 420 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) and was sentenced to undergo three years rigorous imprisonment and fine of Rs.5000/- was imposed upon him and in case of default of payment of fine, one month rigorous imprisonment was ordered. Second accused namely, Rainy Sabia, had been acquitted by the aforesaid judgment.

(7) Challenge has also been made to the judgment dated 20.07.2017 passed by the Additional Sessions Judge, Sri Muktsar Sahib, vide which, an appeal preferred by the present petitioner was also dismissed and the sentence as awarded, was upheld.

(8) The brief facts of the case are that FIR No.83 dated 12.08.2011 under Sections 420/34 of the IPC was registered on the statement of Gurpreet Singh to the effect that he was a student of Better Think IELTS Academy near Police Station Faridkot and it had been alleged that both, the petitioner as well as Rainy Sabia, were running the said academy and the complainant wanted to go to Canada and the petitioner told him that they would take responsibility for the same and help him with the IELTS Exam and prepare all the documents of the complainant and for doing same, the complainant and his family members had paid an amount of Rs.5,00,000/- to the accused persons. It was further alleged that the petitioner had issued a cheque amounting to Rs.2,45,500/- and another self-cheque amounting to Rs.2,00,000/- and although, cheque of Rs.2,00,000/- was encashed but the cheque No.075760 amounting to Rs.2,45,500/- was dishonoured on its presentation. It is, on the basis of the said allegations, that the present FIR was registered against the petitioner and the co-accused Rainy Sabia.

(9) After considering the entire evidence and documents on

record, the Judicial Magistrate Ist Class, Gidderbaha, had convicted and sentenced the petitioner as stated hereinabove and Rainy Sabia was acquitted.

(10) An appeal preferred by the petitioner was also dismissed by the Additional Sessions Judge, Sri Muktsar Sahib.

(11) The present Criminal Revision has been filed challenging the abovesaid two judgments.

(12) Learned counsel for the petitioner and respondent No.2 have stated that during the pendency of the proceedings, a compromise has been effected between the petitioner and respondent No.2 and accordingly, an application i.e. CRM-2301-2022, has also been filed under Section 482 read with Section 320 of Cr.P.C. for grant of permission to compound the offence, in view of the compromise effected between the parties and the compromise dated 24.11.2021 has also been placed on record as Annexure P-3. The terms of the said compromise are reproduced hereinbelow:-

“PANCHAYATI COMPROMISE

First Party: Gurpreet Singh Son of Jagtar Singh Resident of Village Assa Butter, Tehsil Gidarbaha District Shri Muktsar Sahib.

Second Party: Sukhwant Singh Son of Gurnam Singh Son of Gurdial Singh Resident of Village Ilmewala Tehsil and District Ferozepur, through his father, Gurnam Singh Son of Gurdial Singh.

1. That both the parties are permanent residents of the above said address.
2. That the first party registered a F.I.R. No.83 dated 12.8.2021 U/s 420/34 IPC against the second party at Police Station, Kotbhai (Case No.437/2014, 109/2015, 14/2018). In this case, the second party, Sukhwant Singh was awarded the punishment. In addition to this, one case of Cheque U/s 138 of Negotiable Instrument Act was filed by the first party against the second party, in which also, the second party was awarded the punishment and the title of the same is Gurpreet Singh Versus Sukhwant Singh.
3. That now, the respected persons got a compromise held

between both the parties and this compromise has been made regarding ending the further litigation and for living with peace from further. This compromise has been held for a sum of Rs.3.00Lacs (Rupees Three Lacs). In this regard, the second party, Sukhwant Singh, through his father, Gurnam Singh, has given Rs.3.00 Lacs (Rs. 300000/-) through Demand Draft Dated 16.11.2021 bearing No. 044115, 000002000:000396 in the name of the first party-Gurpreet Singh by getting the same prepared by Gurnam Singh, father of the second party-Sukhwant Singh and it has been prepared from the State Bank of India. Till then, this Bank Draft is not encashed in the Account of the first party, the compromise will be considered as cancelled and at the time when this Bank Draft will be cashed in favour of the first party-Gurpreet Singh, tent he first party will be boundto give the Statement in favour of the second party in the above said cases in the Ld. Court. If, due to any reason, the first party could not come to give the statement in the court, then in his absence, this compromise will be admissible in the court. This compromise has been held in lieu of the total amount of the above said Rs. 3.00 Lacs (Rs.300000). After this, the first party will not submit any other claim and he has been given his due right. These amount of Rs.3.00 Lacs (Rs.300000/-) will be treated as full and final settlement and the first party will not be entitled to take any other amount, except the above said, from the Second party.

4. That after today, the first party will not file any kind of case or any other case, Civil or Criminal in any court or with the Police against Sukhwant Singh or his father, Gurnam Singh or against any other his family member or relative of the second party and the parties will live with peace in future. If any party do such acts, then the same will be liable to be rejected and will be considered the same as cancelled.

5. That Sukhwant Singh has made this compromise with his own consent through his father, Sh. Gurnam Singh and Sukhwant Singh and his father, Gurnam Singh, will be remained bound to this compromise. The first party will also be remained bound to the conditions of this

compromise. According to this compromise, both the above said cases will be considered as cancelled. The first party will not have any objection for the same. This compromise has been written for proof. Dated 24.11.21.

First Party: Sd/-Gurpreet Singh Son of Jagtar Singh Resident of Village Assa Butter, TehsilGidarbaha District Shri Muktsar Sahib.

Second Party: Sd/-Sukhwant Singh Son of Gurnam Singh Son of Gurdial Singh Resident of Village Ilmewala Tehsil and District Ferozepur, through his father, Gurnam Singh Son ofGurdial Singh.

Witness:

1. Sd/- Pargat Singh Son of Surjan Singh Resident of VillageAsafwala Tehsil Zira District Ferozepur.
2. RTI- Dilbag Singh son of Jarnail Singh Resident of Village Imewala Tehsil and District Ferozepur.
3. Sd/- Jugraj Singh son of Charan Singh Resident of Ilmewala District Ferozepur.
4. Surjit Singh Son of Bachan Singh Resident of Asabutther.

ATTESTED

Sd/- Pankaj KumarNotary Public,
Shri Muktsar Sahb.”

(13) A perusal of the said compromise would show that an amountof Rs.3 lacs has been paid by the petitioner to the complainant-Gurpreet Singh and the said Gurpreet Singh has submitted that as per the said terms of compromise, the present FIR be considered as cancelled.

(14) Learned counsel for the complainant/respondent No.2-Gurpreet Singh, has reiterated the said facts with respect to the compromise having been effected between the parties.

(15) Learned counsel for the petitioner has submitted that the compromise is genuine and bonafide and has referred to the judgment of a Co-ordinate Bench of this Court in *CRM-M-17272-2015 dated 28.01.2016 titled as “Ram Parkash and others Vs. State of Punjab and others”* to contend that under similar circumstances, petition under Section 482 Cr.P.C. was entertained and the FIR with all

subsequent proceedings was quashed and even the judgment of conviction was set aside on the basis of compromise.

(16) Learned counsel for the petitioner has also relied upon the latest judgment dated 29.09.2021 of the Hon'ble Supreme Court of India in *Criminal Appeal no.1489 of 2012 titled as "Ramgopal & Anr. vs. The State of Madhya Pradesh"* and connected matter and has prayed that the present petition be allowed.

(17) Learned counsel for the complainant/respondent No.2 has submitted that the compromise is genuine and bonafide and has been entered into without any coercion, undue influence and pressure and would help in bringing out peace and harmony between the families of the complainant and the petitioner. He has thus, prayed that the present Criminal Revision be allowed.

(18) This Court has heard learned counsel for the parties.

(19) The Hon'ble Supreme Court of India in *Ramgopal and Anr.'s* case (supra) has discussed in detail the power of the High Court under Section 482 Cr.P.C. along with other issues. The relevant portion of said judgment is reproduced hereinbelow:-

“2. The prosecution version, arising out of FIR dated 3rd November 2000, Police Station Ambah, Morena, M.P. is that on account of certain monetary dispute, the Appellants abused and assaulted Padam Singh (Complainant). Appellant No.1 is alleged to have struck the Complainant with a pharsa, which resultantly cut off the little finger of his left hand. Appellant No.2 also struck lathi blows on the body of the Complainant. Appellants were thereafter committed for trial under Sections 294, 323 and 326 read with 34 of Indian Penal Code, 1860 (hereinafter, 'IPC') and Section 3 of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989. Upon analyzing the evidence, the Learned Judicial Magistrate(FC), Ambah, convicted the Appellants under Sections 294, 323 and 326 read with 34 IPC with a maximum sentence of three years under Section 326 read with 34 IPC.

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12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the

nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. vs. State of Punjab & Ors. and Laxmi Narayan* (Supra). xxx xxx xxx

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 extraordinary 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.”

(20) A perusal of the abovesaid judgment would show that it has been held that the extra ordinary power enjoined upon a High Court under Section 482 Cr.P.C., can be invoked beyond the metes and bounds of Section 320 Cr.P.C. It has further been observed that criminal proceedings involving non heinous offences can be annulled irrespective of the fact that trial has already been concluded and appeal stands dismissed against conviction and that handing out punishment is not the sole form of delivering justice. Thus, it goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident.

(21) A Coordinate Bench of this Court in *Ram Parkash's* case (supra), has allowed a case under similar circumstances. The relevant portion of the said judgment is reproduced hereinbelow:

“Prayer in this petition filed under Section 482 Cr.PC is for quashing of the FIR No.225, dated 24.08.2005 (Annexure P- 1) under Sections 323, 324, 452, 506, 148 and 149 IPC (subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar, on the basis of compromise dated 06.02.2015 (Annexure P-4) and all other subsequent proceedings arising therefrom including the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh

Nagar, whereby the accused-petitioners, were convicted and sentenced...

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Quashing of the aforesaid FIR and setting aside of the impugned judgment and order of sentence dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, is sought on the basis of compromise dated 06.02.2015 (Annexure P-4), entered into between the parties during the pendency of the appeal before this Court. xxx--xxx--xxx

This Court in the case of *Sube Singh and another* versus *State of Haryana and another 2013(4) RCR (Criminal)*

102 has considered the compounding of offences at the appellate stage and has observed that even when appeal against the conviction is pending before the Sessions Court and parties entered into a compromise, the High Court is vested unparallel power under Section 482 Cr.PC to quash criminal proceedings at any stage so as to secure the ends of justice and has observed as under:-

“15. The refusal to invoke power under Section 320CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.

16. As regards the doubt expressed by the learned Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in *Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) R.C.R. (Criminal) 910 : (2008)5 SCC 794*, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in

the interest of justice observing that "continuation of criminal proceedings would be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.

17. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.

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21. In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Nonacceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.

22. Consequently and for the reasons afore-stated, we allow this petition and set aside the judgement and order dated 16.03.2009 passed in Criminal Case No. 425-1 of 2000 of

Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise. Resultantly, the appeal preferred by the petitioners against the above-mentioned order dated 16.03.2009 would be rendered infructuous and shall be sodeclared by the first Appellate Court at Hisar.”

Similarly, in the case of *Baghel Singh Versus State of Punjab 2014(3) RCR (Criminal) 578*, whereby the accused was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for two years, the parties entered into compromise during the pendency of the appeal. This Court while relying upon the judgment of *Lal Chand Versus State of Haryana, 2009 (5) RCR (Criminal) 838* and *Chhota Singh Versus State of Punjab 1997(2) RCR (Criminal) 392* allowed the compounding of offence in respect of offence under Section 326 IPC at the appellate stage with the observation that it will be a starting point in maintaining peace between the parties, such offence can be compounded.

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Accordingly, FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC (subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar and all subsequent proceedings arising therefrom, qua the accused petitioners, are quashed, on the basis of compromise dated 06.02.2015 (Annexure P-4), subject to payment of costs of Rs.25,000/-, to be deposited with the Punjab State Legal Services Authority, Chandigarh.

Consequently, the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, are set aside subject to payment of cost.”

(22) Another Coordinate of this Court in a *judgment dated* 09.03.2017 passed in CRR no.390 of 2017 titled as “*Kuldeep*

Singh versus *Vijay Kumar and another*” has held as under:-

“Reliance can be placed on *Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298 and Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097*. The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

The principle as laid down in *Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097*, would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in *Damodar S. Prabhu's* case (supra) to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”

(23) Reliance in the above said judgment was also placed upon the judgment of the Hon'ble Supreme Court in *Damodar S. Prabhu's* case (supra) and thus, as per settled law, this Court has the power to set aside the judgment of conviction passed against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

(24) Keeping in view the law laid down in the above said judgment, more so, the judgment of the Hon'ble Supreme Court in *Ramgopal & Anr's* case (supra), the relevant parameters for consideration as laid down in the said judgment, would be considered by this Court. Firstly, the occurrence which has been involved in the

present petition can be categorized as purely personal/criminal act of private nature. Secondly, in the present case, there is no injury caused to any person and the FIR in the present case, has been registered on account of a monetary dispute, which has been settled and the allegations in the case do not exhibit an element of mental depravity or commission of an offence of such a serious nature. The acquittal in the present case would not override public interest. Thirdly, since the allegations in the FIR show that there was only a monetary dispute, which has now been settled, it is immaterial that the petitioner has been convicted by the Courts below. Fourthly, compromise is without any coercion or compulsion and has been entered into willingly and voluntarily. Fifthly, the occurrence in the present case took place in the year 2011 and there is nothing to show that any untoward incident had taken place after the same. Sixthly, the compromise effected between the parties would help in bringing out peace and harmony among the parties. Seventhly, the object of administration of the criminal justice system would remain unaffected on acceptance of the said amicable settlement between the parties and/or resultant acquittal of the petitioners.

(25) Thus, keeping in view the abovesaid facts and circumstances, the present Criminal Revision is allowed and the judgment of conviction and order of sentence dated 06.04.2015 as well as judgment dated 20.07.2017 are set aside and the petitioner is acquitted of the charges framed against him.

(26) Since, the main case has been decided, application bearing CRM-2300-2020 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

(27) All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

Ritambhira Rishi