

Jaswant Singh vs The State Of Punjab on 20 October, 2021

Author: Vikram Nath

Bench: Vikram Nath, Dinesh Maheshwari

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.1233 of 2021
(Arising out of SLP (Crl.) No 7072 of 2021)

Jaswant Singh

Versus

State of Punjab & Anr.

ORDER

VIKRAM NATH, J.

1. By means of this appeal, the appellant Jaswant Singh has prayed for quashing of the order dated 06.02.2020 passed by the learned Single Judge of the Punjab and Haryana High Court in CRM-M-32011 of 2018 (O&M) whereby the High Court declined to exercise its powers under Section 482 of the Criminal Procedure Code 1 to quash the criminal proceedings arising out of FIR No. 179 dated 29.10.2009 under Section 406/420 of the Indian Penal Code 2 , Police Station Fatehgarh Sahib, District Fatehgarh Sahib. However, the High Court granted bail to the appellant subject to certain conditions contained in the said order. The factual matrix giving rise to the present appeal is narrated hereunder:

2. Respondent no.2 Nasib Singh (the Complainant) moved an application dated 18.08.2009 addressed to the Senior Superintendent of Police, District Fatehgarh Sahib stating therein that he was known to one Gurmeet Singh, who was in the business of sending people 1 Cr.P.C.

2 I.P.C.

abroad. Gurmeet Singh had assured the Complainant that his two acquaintances Jaswant Singh and Gurpreet Singh who were already settled in Italy, would help his son to get a job and settle in Italy. For the aforesaid arrangement, Gurmeet Singh demanded a total amount of Rs 7 lacs. Further, according to the Complainant, Rs 4 lacs was paid in cash on 10.12.2008 and thereafter Rs. 2 lacs were paid by way of a cheque dated 18.02.2009 of the Punjab National Bank, Branch AS College, Khanna in favour of Gurmeet Singh which amount has since been credited in the account of Gurmeet Singh. Soon thereafter Sarpreet Singh, son of the Complainant, was put on a flight to Italy

on 19.02.2009. Further allegation is that Jaswant Singh and Gurpreet Singh did not honour their promise and harassed his son. They did not arrange for a job as per their promise. The documents were misplaced by them and ultimately his son had to return after three/four months. The complaint further alleges that the named accused further demanded Rs. 3 lacs and also threatened of dire consequences in case the money was not paid. That his son was mentally upset and he has also spent huge amount in travelling and treatment of his son. It is thus prayed that appropriate action be taken and justice be done to the Complainant.

3. The said complaint was inquired into by the ASI Manjit Singh of the Economic Offences Wing, Fatehgarh Sahib. In the inquiry, the statements of the Complainant, his son and Gurmeet Singh were recorded. Further Jaswant Singh and Gurpreet Singh, who were settled abroad and named in the complaint, were also called upon to submit their statements which they have forwarded through e-mail. The Inquiry Officer did not find the case so as to make out any offence of cheating or breach of trust and, accordingly, recommended that the application be consigned by order dated 04.09.2009.

4. The in-charge, Economic Offences Wing, Shri Gurdeep Singh, also examined the material and the evidence on record and concurred with the recommendation made by the ASI on 04.09.2009. The Deputy Superintendent of Police, Bassi Pathana, Shri Rajwinder Singh also recommended that there is no need of any action on the application and the same may be consigned. However, the Senior Superintendent of Police Shri Kostav Sharma, directed the Station House Officer to register a first information report and accordingly an FIR was registered on 29.10.2009. The matter was further investigated and a police report under Section 173(2) of the Cr.P.C. was submitted with the finding that a triable case was made out only against Gurmeet Singh, and as against the other two named accused Jaswant Singh and Gurpreet Singh, as there was no evidence of any offence, they were exonerated.

5. In the meantime, an additional statement of the complainant Nasib Singh was recorded on 20.05.2010 in which also he clearly stated that he had paid the amount to Gurmeet Singh, Rs. 4 lacs in cash and Rs. 2 lacs by cheque.

6. Based on the police report and the material enclosed with it, the Magistrate First Class at Fatehgarh Sahib took cognizance and registered the Case No CHI/0600029/2010. During the trial the prosecution moved an application on 11.06.2013 purported to be under Section 319 Cr.P.C. praying for summoning the appellant and the other co-accused Gurpreet Singh to face trial under Section 420 I.P.C. On the same day the Trial Court summoned both the accused under Section 420 I.P.C. As the appellant was in Italy, he did not appear and accordingly was declared as a proclaimed offender on 28.04.2014. The appellant filed a petition under Section 482 Cr.P.C. before the High Court in September, 2018 for quashing of the order dated 28.04.2014 declaring him as a proclaimed offender.

7. In the meantime, the complainant Nasib Singh entered into a compromise with the main accused Gurmeet Singh and they jointly applied before the Trial Court. The Trial Court, vide order dated 26.09.2014 allowed the parties to amicably resolve their issue being of economic import and

accordingly compounded the offence. Proceedings were eliminated against the accused Gurmeet Singh.

8. The High Court, vide interim order dated 10.09.2018, stayed the order of the Trial Court dated 28.04.2014 and further directed the appellant to surrender before the Trial Court within two weeks and on his doing so the Trial Court was directed to release him on interim bail subject to its satisfaction. The appellant thereafter appeared before the Trial Court on 27.10.2018 whereafter the Trial Court admitted him to interim bail on his furnishing bail bonds and surety bonds and in the sum of Rs.1 lac.

9. In the pending 482 Cr.P.C. petition before the High Court, the appellant filed another application registered as CRM No 4655/2020 wherein he prayed for quashing of the proceedings on various grounds and in particular that the complainant had already settled his score with the main accused Gurmeet Singh and on their joint request the Trial Court had already eliminated/ acquitted Gurmeet Singh of the offence.

10. The High Court vide order dated 10.01.2020 permitted to place on record the order granting interim bail and also the order of compounding/acquittal of the co-accused and any other material which the appellant may wish to file. All the relevant material was filed by the appellant before the High Court by way of an application dated 04.02.2020.

11. The High Court, vide the impugned judgment, declined to quash the proceedings on the ground that a perusal of the FIR goes to show that the name of the appellant is specifically mentioned in the FIR and criminal acts have been attributed to him. However, the High Court with respect to the order dated 28.04.2014 declared the appellant to be a proclaimed offender and directed him to surrender before the Trial Court within two weeks and to move an application for a regular bail, which was to be decided within two weeks subject to three conditions. It would be worthwhile to reproduce the order of the High Court, which reads as follows:

“By way of filing the present petition, petitioner Jaswant Singh, a non resident Indian seeks quashing of F.I.R.No.179 dated 29.10.2009 under Sections 406/420 IPC registered at Police Station Fatehgarh Sahib, District Fatehgarh Sahib. I have gone through the F.I.R. A perusal thereof goes to show that name of petitioner is specifically mentioned in the F.I.R. and criminal acts have been attributed to him. Therefore, no ground is there to quash the F.I.R., as such request in that regard is declined. With regard to order dated 28.4.2014 vide which he has been declared a proclaimed offender, he is directed to surrender in the trial Court within two weeks. On his doing so and moving application for regular bail, the same be decided within two weeks. Till then he may not be arrested. This order is subject to the following conditions:-

- i) The petitioner shall surrender his Passport in the trial Court.
- ii) The petitioner shall appear in the trial Court on each and every date of hearing.

iii) The petitioner shall not give any threat or intimidation to the prosecution witnesses.

The petition is disposed of.”

12. When this matter came up before us on 24.09.2021, we had issued notice and further provided that no coercive steps be taken against the appellant.

13. We have heard Shri Lakhwinder Singh Mann, learned counsel for the appellant and Shri Jaspreet Singh Gogia, learned counsel for the respondent.

14. In our view, the present one is amongst those fittest cases where the High Court ought to have exercised its powers under Section 482 Cr.P.C. and ought to have secured the ends of justice by closing the proceedings against the appellants. It is also surprising as to how and in what circumstances after moving an application under Section 319 Cr.P.C., the prosecution continued to contest the case even after 26.09.2014 when the matter had already been compromised and compounded as against the main accused Gurmeet Singh. Apparently, the parties were not able to correctly place the facts and material before the Trial Court or the High Court, which could have closed this matter then and there without proceeding any further.

15. The power under Section 482 Cr.P.C. is to be exercised to prevent the abuse of process of any Court and also to secure the ends of justice. This Court, time and again, has laid emphasis that inherent powers should be exercised in a given and deserving case where the Court is satisfied that exercise of such power would either prevent abuse of such power or such exercise would result in securing the ends of justice. In the case of *S.W. Palanitkar and others. v. State of Bihar and another* 3. Shivraj V Patil, J., in paragraph 27 of the report, has laid similar emphasis. The same is reproduced below:

“Para 27:

.....whereas while exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of 3 (2002) 1 SCC 241 inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 CrPC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.”

16. A seven-Judge Bench in the case of P. Ramachandra Rao vs State of Karnataka 4, also laid down the same principles for use of the power under Section 482 Cr.P.C. in a case where the Court was convinced that such exercise was necessary for whatever reason in order to prevent abuse of the process of any Court or to secure the ends of justice. Lahoti, J., speaking for himself and Bharucha, Quadri, Santosh Hegde, Ruma Pal and Arijit Pasayat, JJ., observed as follows in paragraph 21:

“Para 21. “... In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R. Antulay case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.”” 4 (2002) 4 SCC 578

17. A three-Judge Bench of this Court in Gian Singh vs State of Punjab 5 again summarized the legal position which emerged regarding powers of the High Court in quashing criminal proceedings in exercise of power under Section 482 Cr.P.C. R.M. Lodha, J., (as he then was) speaking for the Bench, clearly observed in paragraph 61 of the report that criminal cases having overwhelmingly and predominately civil flavour stand on a 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. The relevant extract from paragraph 61 is reproduced below:

“61. 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 under Section 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 (in) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 a 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, 5 (2012) 10 SCC 303 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, the High Court may quash the criminal proceedings if in its View, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

18. A three-Judge Bench of this Court in Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others v. State Gujarat and others 6 laid down the broad principles for exercising the inherent powers of the High Court under section 482 Cr.P.C. Dr. D.Y. Chandrachud,J., speaking for the bench, enumerated the principles in paragraph 16 and in sub paragraphs. The same are reproduced below:

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and 6 (2017) 9 SCC 641 plenitude it has to be exercised (o) to secure the ends of justice, or) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated. 16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. 16.7. distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute.

They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and 16.10. There is yet an exception to the principle set out in propositions 16.8, and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the

balance.”

19. From the above discussion on the settled legal principles, it is clear from the facts of the present case that there was a clear abuse of the process of the Court and further that the Court had a duty to secure the ends of justice. We say so for the following reasons:

a) The allegations made in the FIR had an overwhelmingly and predominatingly a civil flavour inasmuch as the complainant alleged that he had paid money to Gurmeet Singh, the main accused to get employment for his son abroad. If Gurmeet Singh failed the complainant could have filed a suit for recovery of the amount paid for not fulfilling the promise.

b) Initially, the investigating officer and two superior officers of the economic wing has found that there is no substance in the complaint making out even a prima facie triable case and had therefore, recommended for closure. However, on the orders of the Senior Superintendent of Police, the FIR was registered and the matter was investigated. No criminal breach of trust was found and the charge sheet was submitted only against Gurmeet Singh under section 420 I.P.C.

c) The complainant Nasib Singh had clearly deposed that he had paid Rs 4 lacs cash to Gurmeet Singh and had also given a cheque of Rs 2 lacs favouring Gurmeet Singh which he had encashed.

d) During trial the present appellant as also the other co-accused Gurpreet Singh were summoned in April 2014 invoking powers of Section 319 Cr.P.C., for being tried under Section 420 I.P.C. It may be noted that no specific allegations of cheating are made against these two accused as they were both settled abroad in Italy.

e) The complainant Nasib Singh entered into a compromise with the main accused Gurmeet Singh which was filed before the learned Magistrate and the same was accepted vide order dated 26.09.2014 and the alleged offence being of financial transaction stood compounded. Proceedings against Gurmeet Singh were closed.

f) Right from 2014, the present appellant and other co-accused Gurpreet Singh who were in Italy were being summoned by the Court. The appellant was declared proclaimed offender. The appellant applied before the High Court challenging the order declaring him proclaimed offender and also filed a 482 Cr.P.C. petition for quashing of the proceedings wherein, he also filed the compounding order of 26.09.2014.

g) The High Court merely perused the FIR and noting the fact that the name of the appellant was mentioned in the FIR, declined to exercise the inherent power under Section 482 Cr.P.C.

20. In our considered view, the High Court erred in firstly not considering the entire material on record and further in not appreciating the fact that the dispute, if any, was civil in nature and that the complainant had already settled his score with the main accused Gurmeet Singh against whom the proceedings have been closed as far back as 26.09.2014. In this scenario, there remains no justification to continue with the proceedings against the appellant.

21. For all the reasons recorded above on facts and on law both the present appeals deserve to be allowed. The impugned proceedings arising out of FIR No.179 dated 29.10.2009, PS Fatehgarh Sahib and all consequential proceedings stand quashed qua the appellant.

.....J. [Dinesh Maheshwari]
.....J. [Vikram Nath] New Delhi;

October 20, 2021.