

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRM No. M-10315 of 2014

Date of Decision:- 7.1.2015

Jagvir Singh @ Sonu

...Petitioner

Vs.

State of Punjab & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Varinder Pal Singh Mithewal, Advocate for the petitioner.

Mr.Rajat Bansal, AAG Punjab for respondent No.1.

Nemo for respondent Nos.2 and 3.

Mehinder Singh Sullar, J. (Oral)

The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that initially, in the wake of statement of complainant Balwinder Singh s/o Gurcharan Singh (respondent No.2) (for brevity "the complainant"), with respect to kidnapping of his daughter Kuldeep Kaur (respondent No.3), a criminal case was registered against petitioner-accused Jagvir Singh alias Sonu son of Surinder Singh alias Chhinder, vide FIR No.161 dated 14.10.2013 (Annexure P1) on accusation of having committed the offences punishable u/ss 363 and 366-A IPC by the police of Police Station Machhiwara, Police District Khanna, District Ludhiana.

2. During the course of investigation of the criminal case, good sense prevailed and the parties have amicably settled their disputes, by means of affidavit/compromise dated 13.3.2014 (Annexure P-2).

3. Having compromised the matter, the petitioner-accused has preferred the present petition, to quash the impugned FIR (Annexure P-1)

and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC, inter-alia, pleading that now with the intervention of friends, elders and respectables of society, the parties have amicably settled their disputes, by way of indicated affidavit/compromise (Annexure P2). They belong to the same area. They have redressed their grievances, have no grudge against each other and will lead peaceful life in future. The complainant has accepted the marriage of his daughter Kuldeep Kaur with petitioner Jagvir Singh and now they are peacefully residing as husband & wife in her matrimonial home. The complainant and victim have no objection if the criminal case registered against the petitioner, by virtue of impugned FIR is quashed. On the strength of aforesaid grounds, the petitioner sought to quash the impugned FIR (Annexure P-1) and all other consequent proceedings arising thereto in the manner depicted here-in-above.

4. During the course of preliminary hearing, the Area Magistrate was directed to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the affidavit/compromise (Annexure P-2) between them, by means of order dated 24.3.2014 by a Coordinate Bench (T.P.S.Mann, J.) of this Court.

5. In compliance thereof, the Magistrate, having recorded the statements of all the concerned parties, has reported, vide his report dated 13.5.2014 that the compromise is voluntarily, genuine and without any pressure, undue influence or coercion.

6. In this manner, once it stands proved on record that respondent No.3 has performed the marriage and now she is residing with the petitioner as his wife in her matrimonial home, then, no offences punishable u/ss 363

and 366-A IPC are made out against the petitioner, in view of ratio of law laid down by Hon'ble Apex Court in cases Prashant Bharti v. State of NCT of Delhi 2013(3) RCR (Criminal) 399, Indra Sarma v. V.K.V.Sarma 2014 (1) RCR (Criminal) 179 and Lata Singh v. State of UP and another 2006 (5) SCC 475. Therefore, the parties are well within their legal right to settle the matter on the basis of compromise.

7. An identical question came to be decided by this court in a recent judgment in case Gian Sarup v. State of Punjab, 2013(4) RCR (Criminal) 183, wherein having considered the scope of offences, in question, it was ruled as under (paras 20 & 21) :-

“20. A conjoint and meaningful reading of sections 361, 363 and 366 IPC would reveal that in order to attract these provisions, the prosecution was required to prove by producing cogent evidence on record that the appellant has actually taken or enticed away or induced the prosecutrix with intent that she may be compelled to marry her. Actual taking or enticing away a minor out of the keeping of the lawful guardian are the essential ingredients of the offence of kidnapping. The word “takes” no doubt means physical taking not necessarily means by use of force or fraud. If the two words “taking or enticing” carrying a very significant meaning, are read together, would suggest that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement, then the accused cannot be considered to have committed the offence of kidnapping. In other words, in case the minor herself abandoned the guardianship, in the absence of any evidence of taking or enticing or blandishments and left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joined the appellant, perhaps it will not invite the application of the provisions of kidnapping.

21. That means, if the prosecution fails to prove that immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so, then, it would not be legitimate to infer that he is guilty of taking the minor out of the keeping of the lawful guardian merely because after she had voluntarily left her guardian's house, joined and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place to facilitate and fulfill the intention of the girl. It falls short of an inducement to the minor to slip out/abandon her father's protection will not tantamount to “taking” as

contemplated u/s 361 IPC. Reliance in this regard can be placed to a celebrated judgment of Hon'ble Apex Court in case S.Varadarajan v. State of Madras 1965 AIR (SC) 942, which was subsequently followed in various judgments.”

8. What cannot possibly be disputed here is that the law with regard to quashing of criminal prosecution on the basis of compromise is no more *res integra* and is now well-settled. The Hon'ble Supreme Court in case Gian Singh v. State of Punjab and another, 2012 (4) RCR (Criminal) 543 has interpreted the relevant provisions and considered a line of the judgments on the indicated points and it was ruled (para 57) as under:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences 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 (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc., cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. or the family disputes where the wrong is basically private or personnel in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and

prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

9. Sequelly, the same view was reiterated by the Hon'ble Apex Court in case Narinder Singh & others v. State of Punjab & Anr. 2014 (2) RCR (Criminal) 482.

10. Meaning thereby, it stands proved on record that the parties have amicably settled their disputes, by means of affidavit/compromise (Annexure P2) and the pointed report of the Magistrate.

11. Such thus being the legal position and material on record, now the short & significant question, though important, which invites an immediate attention of this Court and arises for determination in this petition, is as to whether the impugned FIR deserves to be quashed on the basis of compromise or not?

12. Having regard to the contentions of the learned counsel, to my mind, it would be in the interest and justice would be sub-served if the impugned FIR is quashed. Moreover, the learned counsel are *ad idem* that, in view of the settlement of disputes between the parties, the instant petition deserves to be accepted in this context.

13. As is evident from the record that now with the intervention of friends, elders and respectables of society, the parties have amicably settled their disputes, by way of indicated affidavit/compromise (Annexure P2).

They belong to the same area. They have redressed their grievances, have

no grudge against each other and will lead peaceful life in future. The complainant has accepted the marriage of his daughter Kuldeep Kaur with petitioner Jagvir Singh and now they are peacefully residing as husband & wife in her matrimonial home. The complainant and victim have no objection if the criminal case registered against the petitioner, by virtue of impugned FIR is quashed. In that eventuality, the question of commission of indicated offences by the petitioner did not at all arise under the present set of circumstances. Thus, the registration of the impugned FIR by the complainant amounts to deep misuse/abuse of process of law and deserves to be quashed, in view of the law laid down by Hon'ble Supreme Court in case State of Haryana and others v. Ch.Bhajan Lal and others **AIR 1992 Supreme Court 604**, which was again reiterated in case Som Mittal v. Government of Karnataka **2008(2) R.C.R.(Criminal) 92**. The Bench mark for quashing the criminal prosecution as set out in the aforesaid judgments "mutatis mutandis" is fully applicable to the facts of the present case and is the complete answer to the problem in hand.

14. Therefore, there is no impediment in translating their wishes into reality and to quash the criminal prosecution to set the matter at rest, to enable them to live in peace and to enjoy the life and liberty in a dignified manner. Otherwise also, if the present prosecution is allowed to continue, then it will inculcate and perpetuate injustice to the petitioner and adversely affect the matrimonial relationship of petitioner and respondent No.3 as husband & wife, which, to me, is not legally permissible in this relevant connection.

15. No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties.

16. In the light of aforesaid reasons, the instant petition is accepted. Consequently, the impugned FIR (Annexure P1) & all other subsequent proceedings arising therefrom are hereby quashed and the petitioner is discharged from the pointed criminal case on the basis of compromise, subject to all just exceptions.

17. Needless to mention that in case, the petitioner fails to maintain and nicely keep respondent No.3 as his wife, then, the criminal prosecution would be deemed to have been automatically revived and prosecution/complainant would be at liberty to prosecute him for the indicated offences.

7.1.2015
AS

(Mehinder Singh Sullar)
Judge