

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-18029 of 2014
Date of Decision: 09.02.2015.**

Sunder and others

.....Petitioners

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. L.S.Mann, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

Respondent No. 2 in person along with
Mr. Prashant Sethi, Advocate.

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SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 165 dated 24.9.2013, under Section 376, 417, 493, 506, 120-B of the Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Shahkot, Jalandhar (Annexure P-1) and all the subsequent proceedings arising therefrom on the basis of compromise dated 18.11.2013 effected between the parties.

Learned counsel for the petitioners has submitted that no offence under Section 376 IPC could be said to have been committed by petitioner No. 1 as respondent No. 2 had herself left with petitioner No. 1 and had resided with him for more than five months. In fact, respondent No. 2 was married to Nachhattar

Singh alias Satti and had left with petitioner No. 1 during the subsistence of the said marriage. Since respondent No. 2 had not got a decree of divorce from her husband, the allegation put-forth by respondent No. 2 that she had accompanied petitioner No. 1 on his promise that he would marry her, was without any basis. Respondent No. 2 could not have performed marriage with petitioner No. 1 during the subsistence of her marriage with her husband Nachhattar Singh alias Satti. However, now the parties have amicably settled their dispute.

Respondent No. 2 is present in person and has admitted the factum of compromise between the parties and also admitted the contents of her affidavit Annexure P-2 (already on record). Respondent No. 2 has stated that she has no objection if the FIR in question is ordered to be quashed.

As per the Full Bench judgment of this Court in **Kulwinder Singh and others vs. State of Punjab, 2007 (3) RCR (Criminal) 1052**, High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court felt that the same was required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

Hon'ble the Apex Court in the case of **Gian Singh vs. State of Punjab and another** 2012 (4) RCR (Crl.) 543, has held 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-dominatingly 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 personal 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 continuation of criminal case would put 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 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.”

In the present case, allegations have been levelled by

respondent No. 2 against petitioner No. 1 qua commission of offence punishable under Section 376 IPC. In normal circumstances, FIR registered qua commission of offence punishable under Section 376 IPC is not quashed on the basis of compromise as the said offence can be said to have been committed against the society. However, the facts of the present case are peculiar. Respondent No. 2 is married to Nachhattar Singh alias Satti. During the subsistence of her marriage, she left with petitioner No. 1 and resided with him for more than five months. Since respondent No. 2 had not got a decree of divorce from her husband, the plea put-forth by her that she had accompanied petitioner No. 1 on a promise made by him that he would perform marriage with her, would be a debatable issue as to whether offence under Section 376 IPC has been committed or not. It is probable that respondent No. 2 left with petitioner No. 1 of her own free will during the subsistence of her marriage with Nachhattar Singh alias Satti. In any case, now the parties have amicably settled their dispute. Hence, continuation of criminal proceedings against the petitioners would be nothing but an abuse of process of law.

Accordingly, this petition is allowed. FIR No. 165 dated 24.9.2013, under Section 376, 417, 493, 506, 120-B IPC, registered at Police Station Shahkot, Jalandhar (Annexure P-1) and all the consequential proceedings, arising therefrom, are quashed.

**(SABINA)
JUDGE**

February 09, 2015
Gurpreet