

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-2144-2015
Date of decision:24.8.2015**

Gulam Rasul and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Amandeep Saini, Advocate for the petitioners.
Mr. Daljeet Singh Virk, AAG, Punjab.
Respondent No.3 in person.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioners have approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), invoking its inherent jurisdiction, for quashing of FIR No.60 dated 29.3.2014 registered under Sections 363, 366-A and 120-B of the Indian Penal Code ('IPC' for short), at Police Station Sadar Dhuri, District Sangrur and the consequential proceedings arising therefrom

Notice of motion was issued and pursuant thereto reply by way of affidavit dated 17.8.2015 has been filed on behalf of respondent-State of Punjab. However, despite service, respondent No.2-complainant did not appear.

In compliance of the order dated 17.8.2015 passed by this Court, Ms.Jamila (respondent No.3) D/o Sh.Sadak (respondent No.2) is present in the Court. Her brother Gulam Nabi son of Sadak is also present in the Court and submits that they have compromised the matter and they have

no objection in case the impugned FIR is quashed.

Learned counsel for the State, on instructions from ASI Karamjit Singh, Police Station Sadar, Dhuri, District Sangrur, submits that although the complainant appeared before the Deputy Superintendent of Police, Dhuri, District Sangrur, on 31.12.2014 and stated that he has amicably settled the matter and will make a statement that he has got no objection if the impugned FIR is quashed, yet despite having been sent repeated reminders, complainant is not coming forward. He was duly intimated by issuing a notice under Section 160 Cr.P.C. to appear before this Court today and he assured that he will come present, however, he has not come present. Efforts were made to contact him on his mobile but he has put off his mobile.

Respondent No.3, who is present before the Court, submits that she has gone with petitioner No.1 namely Gulam Rasul, on her own sweet will with a view to perform marriage with him. Thereafter, she performed the marriage with petitioner No.1 against the wishes of her father namely Sh.Sadak-respondent No.2 (complainant). As petitioner No.1 and respondent No.3 were apprehending danger to their life and liberty at the hands of respondent No.2, they approached this Court by way of CRM-M-12938-2014 (Jamila and another v. State of Punjab and others), seeking protection to their life and liberty. Said petition was disposed of by this Court vide order dated 15.4.2014 (Annexure P-3).

She further stated that she is still living with petitioner No.1 as his wife, without there being any kind of difficulty, except that her father-respondent No.2 is not happy with their marriage. She submits that this is the only reason that he is not coming forward before this Court, despite

having suffered a statement before the Deputy Superintendent of Police on 31.12.2014 that he shall make a statement for getting the impugned FIR quashed.

In view of the above, learned counsel for the petitioners submits that once the parties to the marriage are living together happily, continuation of the impugned FIR and the subsequent criminal proceedings arising therefrom, would amount to abuse of process of law and the impugned FIR is liable to be quashed.

Learned counsel for the State also fairly states that in view of the material fact that petitioner No.1 and respondent No.3 are living together happily as husband and wife, coupled with the fact that the complainant-respondent No.2 appeared before the Deputy Superintendent of Police, Dhuri, on 31.12.2014 and stated that he has amicably settled the matter, continuation of the criminal proceedings arising out of the impugned FIR, would not be justified, particularly when Gulam Nabi, brother of respondent No.3, who is also present in the Court, has stated that he has got no objection in case the impugned FIR is quashed.

Having heard the learned counsel for the parties and after going through the record of the case, this Court is of the considered opinion that in the given fact situation of the present case, the instant one has been found to be a fit case warranting interference at the hands of this Court, while exercising the inherent jurisdiction of this Court under Section 482 Cr.P.C., for the following more than one reasons.

It is a matter of record that the impugned FIR was registered at the instance of respondent No.2-complainant who appeared before the Deputy Superintendent of Police, Dhuri, on 31.12.2014. He further stated

before the Deputy Superintendent of Police that he has amicably settled the matter and will make a statement to the effect that he has got no objection if the impugned FIR is quashed. However, it seems that he had second thought and now trying to back out from his statement, for the reasons best known to him. He did not come forward before this Court nor he has filed any reply to the present petition, which prima facie shows that he is trying to wriggle out from his own stand, which he earlier took before the Deputy Superintendent of Police, Dhuri, on 31.12.2014. Having said that, this Court feels no hesitation to conclude that continuation of the impugned criminal proceedings arising from the impugned FIR, would be nothing but a sheer misuse of process of the Court. In such a situation, the impugned FIR as well as subsequent criminal proceedings arising therefrom are liable to be quashed.

As per the reply filed by the State, respondent No.3 was aged 16 years and 7 months on the date of occurrence, i.e. 27.3.2014. Thus, by now, she has attained the age of majority. Even if respondent No.3 was minor at the time of alleged incident, when she went with petitioner No.1 with a view to marry with him, their marriage cannot be said to be void. It would be at the most a voidable marriage and that too at the instance of one of the parties to the marriage.

Under somewhat similar circumstances, the Hon'ble Supreme Court in its judgment in the case of **S.Vardarajan v.State of Madras, AIR 1965 SC 94** held that once the girl has attained the age of discretion, she would have every right to perform the marriage with a person of own choice. Under these circumstances, it can be safely concluded that continuation of the criminal proceedings arising out of the impugned FIR

would be only a futile exercise, because there is no chance of conviction and it will also amount to wastage of valuable time of the court.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court of India in **Ruchi Aggarwal v. Amit Kumar Agarwal**, 2005 (3) SCC 299, **Mohd. Shamim v. Smt. Nahid Begum**, 2005 and another, (2005) 3 SCC 302, judgments of Delhi High Court in **Satish Gathwal v. State**, 1999 (1) RCR (Crl.) 59, **Rajesh and others v. State and another**, 2008 (3) JCC 1536 and **Dalbir Singh v. State and others**, 2013 (6) RCR (Crl.) 609 and judgment of this Court in **Nirmal Sachdeva v. State of Haryana and another** 2008 (2) Cri. CC 865.

The observations made by the Hon'ble Supreme Court in paras 11 and 12 of its judgment in **Mohd. Shamim's** case (supra), which can be gainfully followed in the present case, read as under:

“Before us, there is no denial or dispute as regard the factum of entering into the aforementioned settlement dated 14.11.2002. In the said deed of compromise it has categorically been averred that the same had been entered into on the intervention of S.N. Gupta, Additional Sessions Judge, Delhi. It has also been accepted that out of sum of Rs.2,75,000/-, a sum of Rs.2,25,000/- has been paid to the First Respondent herein and the balance amount of Rs.50,000/- would be paid at the time of complainant's making statement and no objection for quashing the FIR, which was retained in the court as per the direction of the court. It has further been averred that no dispute remained between the parties regarding the payment of dower amount (Mehar), dowry articles, including the alleged jewellery gift etc.

In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional

Sessions Judge, we are of the opinion, the contention of the First Respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavit which were got signed by her by misrepresentation of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of the Respondent No.1 herein.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, Delhi High Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that the continuation of the prosecution any further, would be nothing but sheer abuse of the process of law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned and to secure the ends of justice, FIR No.60 dated 29.3.2014 registered under Sections 363, 366-A and 120-B IPC at Police Station Sadar Dhuri, District Sangrur and the consequential proceedings arising therefrom are ordered to be quashed, however, qua the petitioners only.

Resultantly, with the above-said observations made, the instant petition stands allowed, however, with no order as to costs.

24.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE