

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

**Criminal Misc. No. M-28404 of 2015
Date of Decision: 6.10.2015**

Raj Kumar

--Petitioner.

Vs.

State of Punjab and another

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Harkaran Singh, Advocate for
Mr. Surinder Thakur, Advocate
for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

Mr. M.S.Bajwa, Advocate
for respondent No.2.

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

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of FIR No. 34 dated 28.3.2015 registered under Sections 376 of Indian Penal Code ('IPC' for short) at Police Station Sadar, Hoshiarpur and criminal consequential proceedings arising therefrom.

In fact, initially, the present petition was filed for quashing of

the impugned FIR on the basis of compromise dated 3.8.2015 (Annexure P-2). Notice of motion was issued, vide order dated 24.8.2015 directing the parties to appear before the learned Illaqa Magistrate on or before 7.9.2015 for getting their statements recorded, so as to enable the learned court to record its satisfaction on the genuineness of compromise. Learned Magistrate was also directed to send his report to this Court before the next date of hearing.

In compliance of the abovesaid order dated 24.8.2015, parties appeared before the learned Illaqa Magistrate and made their respective statements. After recording the statements of the parties, learned Magistrate sent his report dated 7.9.2015, which is available on record. As per report received from the learned Illaqa Magistrate, compromise between the parties was found to be a genuine one and without any coercion or undue influence. However, when the case came up for hearing, learned counsel for the complainant-respondent No.2 submitted that since the petitioner was again harassing the respondent-complainant, she wanted to withdraw her statement and also from the compromise. He sought permission of the Court to argue the case on merits.

Learned counsel for respondent No.2-complainant was granted an opportunity to get clear instructions from respondent No.2 and the case was passed over. When the case was again taken up for hearing, learned counsel for respondent No.2 appeared and stated that respondent No.2 wants to contest and oppose this petition on merits.

Faced with the abovesaid situation, learned counsel for the petitioner submits that respondent No.2 was earlier married with one Mandhir Singh son of Jaswinder Singh on 7.6.2006. Respondent No.2 gave birth to a female child on 14.8.2010 but some differences arose between husband and wife. As per own case of the complainant-respondent No.2, she got divorce from her earlier husband on panchayat basis with the intervention of relatives, friends and respectables. Thereafter, when the complainant was staying at her parental house, she took a shop on rent from the petitioner and started running a beauty parlour therein. It has been further alleged by the complainant that petitioner and the complainant were having an undesirable relation with each other. After having some temperamental differences, complainant got the impugned FIR registered against the petitioner. When the investigating agency issued notice to the complainant under Section 160 Cr.P.C., asking her to appear before the learned Illaqa Magistrate to get her statement recorded under Section 164 Cr.P.C., she did not turn up and the application was disposed of, vide order dated 8.4.2015 (Annexure P-3). Thereafter, they entered into an amicable settlement by way of compromise dated 3.8.2015 (Annexure P-2) and on the basis thereof, present petition was filed for quashing the impugned FIR on the basis of compromise.

Learned counsel for the petitioner further submits that once the complainant has entered into a compromise and also suffered statement before the learned Illaqa Magistrate without there being any undue influence, she cannot be permitted to turn around and say

that she is no more interested in the amicable settlement already arrived at between the parties, and that too, without disclosing any justified reasons. He concluded by submitting that even if the allegations levelled in the impugned FIR are taken to be true on their face value, no offence, whatsoever, would be made out against the petitioner. He prays for quashing the impugned FIR and consequential criminal proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for the complainant-respondent No.2 submit that the complainant cannot be forced to enter into an amicable settlement, once she is not agreeing to the terms of compromise arrived at between the parties vide Annexure P-2. In such a situation, petitioner is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. They pray for dismissal of the present petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

When the case came up for hearing on 24.8.2015, following order was passed by this Court:-

“Learned counsel for the petitioner submits that the petitioner and respondent No.2-complainant are residing as husband and wife. Petitioner is the only accused in the impugned FIR and he is not proclaimed offender. The impugned FIR is being sought to be quashed on the basis of compromise (Annexure P-2).

Notice of motion for 6.10.2015. In the meantime, parties are directed to appear before the learned Illaqa Magistrate on or before 7.9.2015 for getting their statements recorded so as to enable the learned Magistrate to record his satisfaction on the genuineness of compromise. Thereafter, the learned Magistrate shall send his report to this Court before the next date of hearing.

In compliance of the abovesaid order, parties appeared before the learned Illaqa Magistrate on 4.9.2015 and respondent No.2-complainant got her statement recorded, which reads as under:-

Statement of Kuljit Kaur wife of Raj Kumar resident of Akash Colony, Shergarh road, Tehsil and District Hoshiarpur on SA

Stated that a case FIR No. 34 dated 28.3.2015 under Section 376 IPC, Police Station Sadar, Hoshiarpur was registered on my statement against petitioner accused Raj Kumar son of Sh. Om Parkash. Petitioner Raj Kumar is my husband. Now with the intervention of respectable and

relations of the parties, we have compromised the matter. The compromise is genuine, voluntarily, without any pressure or coercion. Now we both are residing as husband and wife amicably. I have no objection if FIR and its subsequent proceedings are quashed against the petitioner and he is discharged/acquitted.

*(Jagmilap Singh Khushdil)
Judicial Magistrate First Class
Hoshiarpur/04.09.2015"*

Similar statement was got recorded by the petitioner. Photostat copy of the Aadhaar Card of the complainant is also available with the report dated 7.9.2015. Relevant part of report dated 7.9.2015 received from JMFC, Hoshiarpur, through learned District and Sessions Judge, Hoshiarpur, reads as under:-

"Accordingly in compliance of the aforesaid order of the Hon'ble High Court, both the parties, i.e. Raj Kumar/petitioner and Kuljit Kaur/respondent No.2 recorded their respective statement on 4.9.2015 with regard to compromise. Statements of both the parties were counter authenticated by their Ld. Counsel and respective identity proof of both the parties have also been taken.

As per the statements suffered by the parties, that they have compromised the matter, voluntarily, without any coercion or undue influence and is a genuine one and from the statement of the parties, the Court is of the considered opinion that both the parties have entered into a genuine

compromise, voluntarily and without any coercion or undue influence. Hence, the report is presented in the regard for kind perusal of your good self for onward transmission to the Hon'ble High Court."

A bare reading of the abovesaid order, statement of respondent-complainant and the report received from the learned Magistrate would show that complainant-respondent is trying to misuse the process of court. It is not even argued on behalf of complainant that she was not signatory to the compromise or the same was not a genuine one. Further, even if the statement made on behalf of complainant, through her counsel in the court today is accepted, she never lodged any protest in this regard, either before the investigating agency or before the learned Illaqa Magistrate or before this Court. Having said that, this Court feels no hesitation to conclude that compromise Annexure P-2 was a voluntary and genuine one.

Thereafter, in compliance of the order dated 24.8.2015 passed by this Court, complainant-respondent No.2 appeared before the learned Illaqa Magistrate and made her abovesaid statement. However, at the time of final disposal of the present petition, complainant-respondent has tried to wriggle out from the compromise taking a complete somersault.

In fact, complainant-respondent is now trying to back out from the compromise because of her ulterior motive. As per her own stand taken in the impugned FIR, she was staying with the petitioner in a live-in-relationship, with her own sweet will and without there

being any pressure on her. In such a situation, it is unhesitatingly held that complainant-respondent was not a reliable person and she has been changing her stand from time to time, as per her convenience and suitability. She has been found to have misconducted herself to such an extent that she has no respect for the justice delivery system and has been misusing the process of law because of her malafide intention.

A perusal of the impugned FIR does not disclose any cognizable offence against the petitioner, even after treating the allegations levelled in the impugned FIR to be true on their face value, without adding anything thereto and without substracting anything therefrom. Under these circumstances, it can be safely concluded that continuation of the impugned FIR and criminal proceedings arising therefrom would certainly amount to further abuse of process of court and shall also result in serious miscarriage of justice. Petitioner cannot be forced to face criminal trial at the hands of a person like the respondent-complainant.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Ruchi Aggarwal Vs. Amit Kumar Aggarwal, 2005 (3) SCC 299, Mohd. Shamin Vs. Smt. Nahid Begum, 2005 (3) SCC 302** and from order dated 11.9.2015 passed by this Court in CRM-M-36182 of 2014 (Jagdish Raj Sharma Vs. State of Punjab and another).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this

Court is of the considered view that present petition deserves to be allowed.

Consequently, FIR No. 34 dated 28.3.2015 registered under Sections 376 IPC at Police Station Sadar, Hoshiarpur and consequential criminal proceedings arising therefrom are hereby ordered to be quashed, so as to prevent any further abuse of process of court and also to secure the ends of justice, however, qua the petitioner only.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

6.10.2015
AK Sharma