

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

**Criminal Misc. No. M-4542 of 2015 (O & M)
Date of Decision:-04.12.2015**

Kanwaljit Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Manish Prabhaker, Advocate
for the petitioners.

Mr. P.S. Madahar, AAG Punjab.

Mr. Sanjay S. Majithia, Advocate
for the complainant.

HARI PAL VERMA J.(Oral)

Prayer in this petition is for quashing of FIR No.127 dated 11.9.2014 (Annexure P-1), under Sections 366, 376, 313 and 120-B IPC, registered at Police Station Ghuman, District Batala on the basis of compromise as petitioner No.1-Kanwaljit Singh and respondent No.2-complainant-Devinder Kaur got married on 27.11.2014 and are residing as husband and wife thereafter.

The FIR in question was registered at the instance of complaint made by respondent No.2/complainant Davinder Kaur. As per FIR, about 4 years back, the petitioner Kanwaljit Singh s/o Baldev Singh, r/o Village Jijewani, Majitha, District Amritsar had come to see the complainant in Gurudwara Sahib Dhan Dhan Baba Sadoana Sahib. The petitioner No.2-Harpreet Singh @ Happy had played the role of mediator and fixed her meeting with petitioner No.1-accused Kanwaljit Singh. In the said meeting, petitioner No.1 has proposed the complainant by stating that he is serving in Indian Army and firstly he has to get the marriage of her sister and thereafter he would marry her (complainant). As he agreed to get marry with the complainant, accordingly gave his mobile number to her. About five days thereafter, the petitioner called the complainant at Batala on the premises that they will go to Chavinda Devi to pay the homage and on his persuasion, the complainant reached Batala, wherefrom she was taken to Chavinda Devi in someone's house. There, despite her refusal, he (the petitioner No.1-Kanwaljit Singh) forcibly had sex with her, which continued on different occasions. Resultantly, the complainant became pregnant. Being pregnant, the complainant talked to petitioner No.1-Kanwaljit Singh on his mobile as he had already gone on duty, who made a phone call to petitioner No.2. Thereafter, petitioner No.2-Harpreet Singh @ Happy gave her medicine for termination of pregnancy and in this manner, the pregnancy was terminated. On 18.3.2015 petitioner No.1 came on leave and called the complainant to meet him at Batala on the pretext of doing shopping. Again on 27.3.2015 he called the complainant in Gurudwara Nagiana Sahib, from where she was taken to someone's house and was again forcibly raped. However,

when the complainant talked to petitioner No.1 about marriage, he flatly refused. In this manner, the complainant has been deceived and lodged the present FIR.

Learned counsel for the petitioners submits that the parties have decided to bury the hatchet and they have mutually got marriage on 27.11.2014. Since then they (petitioner No.1-Kanwaljit Singh and the complainant Davinder Kaur) are living peacefully as husband and wife. Petitioner No.1 is working in the Indian Army and presently posted at Siachen Glacier. He further submits that continuation of the impugned FIR, particularly when the parties have got marriage and decided to stay together as husband and wife, and subsequently criminal proceedings arising therefrom are liable to be quashed in the interest of justice.

On notice of motion having been issued, respondent No.2-complainant has filed her affidavit dated 17.11.2015, which reads as under :-

- "1. That deponent is resident of aforesaid address.*
- 2. That deponent got married with Kanwaljit Singh s/o Baldev Siongh r/o Vill. Jijewani, District Amritsar on 27.11.2014 as per Sikh rites and rituals with her own sweet will without any kind of fear and pressure.*
- 3. That deponent has no objection if FIR No.127 dated 11.9.2014 registered under Sections 366,376, 313, 120-B of IPC 1860 in the Police Station Ghuman, District Batala may be quashed.*
- 4. That deponent has no interest to pursue the aforesaid FIR.*
- 5. That deponent has compromised with her*

husband Kanwaljit Singh s/o Baldev Singh r/o Village Jijewani, Majitha, District Amritsar and Harpreet Singh alias Happy s/o Harpal Singh r/o Village Bhangali Khurd, Majitha, Distt. Amritsar and does not want to get them punished for the alleged offences.

6. *That deponent has furnished this statement with her own wish without any kind of pressure or fear.”*

Learned counsel appearing for respondent No.2-complainant has fairly admitted the factum of marriage as well as the fact that both i.e. petitioner No.1 and respondent No.2 are living together as husband and wife.

Learned counsel for the petitioners while relying upon **Sameer Sharma vs. State of Punjab and others 2014 (5) Law Herald 3913** and submits that in a proceeding for quashing of FIR under Section 376 IPC, quashing of FIR on the ground of compromise is maintainable in the peculiar facts and circumstances of the case. He has submitted that after registration of the case, the complainant (victim) and the petitioner (accused) are living together as husband and wife and they have amicably decided to settle the dispute between them. He has further submitted that continuing of criminal proceedings is not only an abuse of process of Court rather it will spoil their peaceful married life. Therefore, the FIR in question and further proceedings arising therefrom are liable to be quashed by invoking the provision of Section 482 Cr.P.C.

Having heard learned counsel for the parties and after going through the record of the case, this Court is of the considered opinion that

it is a fit case of exercising the jurisdiction of the Court under Section 482 Cr.P.C., so as to secure the ends of justice. The jurisdiction is being exercised for the reason that the parties have arrived at an out of Court settlement by way of compromise. The compromise is without any pressure and is genuine. In such circumstances, continuation of criminal proceedings would be a sheer abuse of the process of law.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court of India in ***Shiji @ Pappu and others versus Radhika and another, 2012 (1) RCR (criminal) 9*** and also from the larger Bench judgment of this Court in ***Kulwinder Singh and others versus State of Punjab and another reported as 2007 (3) RCR (criminal) 1052***. The observations made by the Hon'ble Supreme Court in para 13 of the judgment in ***Shiji's*** case (supra), which can be gainfully followed in the present case, read as under:

“It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit

compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.”

The law laid down by the Hon'ble Supreme Court in **Shiji's** case (supra) has been further reiterated by the Hon'ble Supreme Court in

its later judgments including in the cases of ***Jayrajsinh Digvijaysinh Rana v. State of Gujarat and another, 2012 (12) SCC 401, Gold Quest International Private Limited v. State of Tamil Nadu & Ors., 2014 (4) RCR (Crl) 206, Manohar Singh v. State of Madhya Pradesh and another, 2014 AIR (SC) 3649 and Narinder Singh and others v. State of Punjab and another, 2014 (6) SCC 466.***

Reverting back to the facts of the present case, this Court is satisfied that the compromise arrived at between the parties is genuine. The petitioner No.1 and respondent No.2-complainant are residing together as husband and wife. Further, respondent No.2-complainant has submitted an affidavit that she has no objection if the FIR in question is quashed qua petitioners.

In view of the fact that the parties have entered into compromise and decided to stay together as husband and wife, this Court feels no hesitation to conclude that continuation of the criminal proceedings any further would be nothing but a sheer abuse of process of law. It would result in wastage of valuable time of the Court because chances of conviction would be very bleak. In the similar circumstances, this Court in ***Criminal Misc. No. M-37251 of 2014***, titled as 'Guddu vs. State of Haryana and others', decided on 16.9.2015, has quashed the FIR in more or less in the similar set of facts.

Therefore, considering the peculiar facts and circumstances of the case noted above, coupled with the reason aforementioned and to secure the ends of justice, FIR No.127 dated 11.9.2014 (Annexure P-1), under Sections 366, 376, 313 and 120-B IPC, registered at Police Station

Ghuman, District Batala, and the consequential proceedings arising therefrom are ordered to be quashed, however, qua the petitioners only.

With the above-said observations made, the instant petition stands allowed.

December 04, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE