

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

**Crl. Misc. No.M-36673 of 2014 (O&M)
Date of decision : 29.09.2016**

Harbans Kaur and another

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner(s).

Mr. J.S. Bhullar, A.A.G. Punjab.

Mr. Vivek Goel, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of FIR No.42 dated 16.04.2013, registered under Sections 420, 498-A, 406, 323, 120-B IPC, Police Station Division No.8, Kailash Chowk, Ludhiana.

Petitioner no.1 is the mother-in-law while petitioner no.2 is the brother-in-law of the complainant. The FIR was registered in April, 2013. The petitioners claim that after the registration of the FIR a compromise was effected between the parties and it was agreed that both the parties would withdraw cases and get the FIR quashed filed against each other. It was pleaded that thereafter, petition under Section 13-B of the Hindu Marriage Act was filed and the marriage was dissolved on 04.08.2014. The son of

petitioner no.1 namely Jagdeep Singh had filed petition for quashing of the FIR on merits in 2013 and in view of the compromise, the FIR was quashed against him vide order dated 26.08.2014 (Annexure P-4).

The petitioners have approached this Court pleading that the parties had complied with all the conditions and they had agreed not to pursue the cases and since the matter has been settled finally and divorce had been granted and payment had been made, therefore, the FIR qua them should also be quashed.

On notice, the State has appeared and filed the reply admitting that the petition filed by the husband had been quashed on the basis of compromise. It was pleaded that FIR against the petitioners had not been quashed and the offence were not compoundable.

Respondent no.2 took the plea that the compromise deed dated 03.02.2014 was not acted upon and the amount of Rs.12 lac was not paid nor the dowry articles were returned when the petition under Section 13-B of the Hindu Marriage Act was allowed. It was, however, admitted that the draft of Rs.12 lac was paid to them on 26.08.2014 at the time of quashing of the FIR qua Jagdeep Singh. It was admitted that divorce was granted in the proceedings under Section 13-B of the Hindu Marriage Act. It was further pleaded that the household articles, the list of which was appended along with the reply had not been returned and therefore, the present petition was not maintainable.

Counsel for the petitioner refers to the compromise deed Annexure P-2 and has urged that this compromise was effected between the complainant as the first party and the husband, his mother and brother as the second party and para no.4 of the agreement refers to the payment that was

to be made and it was agreed that the dowry articles would be handed over before passing of the final decree. It was submitted that no objection was taken when the final decree under Section 13-B of the Hindu Marriage Act had been passed. It was also urged that a cheque of Rs.12 lacs had been handed over, which remained in the custody of the counsel and the cheque was returned and demand draft was given at the time of quashing of the FIR. It was urged that the respondents were not supporting them as they want to extract more money and it is out of greed. Counsel for the petitioner had referred to the statement made by the parties in the petition filed under Section 13-B of the Hindu Marriage Act. The copy of the same has been placed on record. Counsel for the petitioner has also placed on record copy of the petition filed by the husband for quashing of FIR on merits only. It was urged that the complainant had gone abroad and the case was being pursued by her father.

The only submission made on behalf of respondent no.2 was that the dowry articles still remained to be returned and they could consider only when the articles were returned. The counsel refers to the list appended along with their reply.

Hon'ble the Apex Court in **Ruchi Agarwal Vs. Amit Kumar Agarwal** 2004(4) RCR (Crl.) 949 has held as under:-

“4. In the compromise petition, referred to herein above, both the parties had agreed to withdraw all the civil and criminal cases filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No. 63 of 2002 on the file of the Family Court, Nainital which was a complaint filed under Section 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant and on the basis of the terms of the compromise, said case came to be dismissed. However, so far as the complaint under Sections 498A, 323 and 506 Indian Penal Code and

under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject matter of this appeal, the appellant did not take any steps to withdraw the same. It is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

5. From the above narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received Stridhan and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings civil and criminal filed and initiated by her against the respondents within one month of the compromise deed which included the complaint under Sections 498A, 323 and 506 Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent-husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

6. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13(B) of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

7. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Criminal Procedure Code proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant

having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”

A perusal of the petition filed by Jagdeep Singh in April, 2013 shows that a complaint initially was given in March, 2011 and a compromise was effected thereafter and it was agreed that petition under Section 13-B of the Hindu Marriage Act would be filed and the matter would be resolved on total payment of Rs.12 lacs. Somehow, the compromise could not be given effect then and the husband filed a petition under Section 13 of the Hindu Marriage Act and he also approached this Court for quashing of the FIR and had also pleaded that he was willing to abide by the compromise that was earlier effected. Along with the petition an affidavit of Banipreet Kaur had been filed wherein there was a positive assertion that all the gold articles had been received by her and she agreed to the compromise that was got effected before the Panchayat Members.

A perusal of the statement recorded in the proceedings under Section 13-B of the Hindu Marriage Act supports the contention of the petitioners. At the time of the statement recorded before the Court below in the proceedings filed under Section 13-B of the Hindu Marriage Act some cheques had been given. There is also reference to the fact that the dowry articles had been handed over to the attorney of Banipreet Kaur and as against the cheque, draft was to be given. A perusal of the Annexure P-4 shows that the draft has been received and on the basis of the compromise FIR qua the husband has been quashed. Both the petitioners were also party to that compromise and the complainant had agreed to all the terms and had

admitted before the Court below that all the articles had been returned. Respondent no.2 is now backing out of the compromise, which is out of greed.

In this view of the matter, the Court is of the considered opinion that continuance of prosecution against the petitioners would be an abuse of process of law. Reference can also be made to **Mohd. Shamim Vs. Smt. Nahid Begum, 2005(1) RCR(Crl.) 697, Rajesh & Ors. Vs. State of Haryana & Ors. 2013(1) Law Herald (P&H) 909, Shlok Bhardwaj Vs. Runika Bhardwaj & Ors. 2015(1) RCR(Crl.) 249 and Jitender Bhargav Vs. State of Haryana & Anr. (Crl.Misc.No.M-34829 of 2014, decided by this Court on 21.05.2015).**

Furthermore, in the case of ***State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)***, the Hon'ble Supreme Court had observed that where continuance of prosecution is abuse of process of law, the Court would be within its power to quash the complaint/FIR.

There is no legal impediment in exercising the powers under Section 482 Cr.P.C. considering the facts of the case. Therefore, in view of the discussion made above, the instant petition is allowed and the impugned FIR and consequent proceedings thereto, qua petitioners are quashed.

29.09.2016

Sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No