

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

**CRM-M-38015-2015 (O&M)
Date of decision: 03.11.2016**

Pawan Kumar

...Petitioner

Versus

State of Punjab & Anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.S. Verma, Advocate,
for the petitioner.

Mr. Arshdeep S. Kler, DAG, Punjab
for the respondent-State.

Mr. Samuel Gill, Advocate
for respondent No.2.

JAISHREE THAKUR, J.

This petition under Section 482 Cr.P.C. has been filed seeking quashing of FIR No. 117 dated 29.08.2015 under Sections 376, 506 IPC registered at Police Station Kharar, District SAS Nagar (Mohali), on the basis of compromise dated 04.10.2015.

2. In brief, the facts of the case are that an FIR came to be registered on 29.08.2015 under Sections 376 & 506 IPC at Police Station Kharar, District SAS Nagar (Mohali) in which it was stated that the complainant-respondent No.2 had sold her WagonR Car (Maruti make) to the petitioner about one year ago for a total sale consideration of Rs. 1,10,000/- but the said amount was never paid to her. Several attempts were made to recover the said amount but to no effect. On the night of 27.08.2015 at about 9.30 p.m. when she made a call to the petitioner, he told her to come present at his office at Kharar on the next day. On 28.08.2015 at

about 3 p.m. she reached at Bus Stand Kharar and made a telephone call from there but he replied that he will call back her after some time. She waited there about an hour but he did not turn up there. Thereafter she sent a SMS to him from her mobile phone, then he made a call and told that he is in Himachal and told her that he is sending a person to pick up her. At about 5.00 p.m. one person namely, Manny, having Mobile No. 9217330001 took her on his motor cycle to H. No. 1101, Jalvayu Tower Block Y, 11th Floor situated at Sunny Enclave, Kharar. At that time Pawan Kumar, petitioner was not there. He came at about 8.00 P.M. and started making pretext about making payment of money. Then Manny went to bring meal for us. He told her to stay there due to night. He told her to drop her Ludhiana on the next day as he was also having programme there. Then Manny came with meal and after taking dinner, she slept in a room. Petitioner and Manny also slept in another room. At about 11.00 p.m. Pawan Kumar forcibly entered in her room despite her resistance, he made physical relations with her. She tried to run away but as the main door was bolted, she could not escape. The petitioner forcibly committed rape upon her by threatening her to her life, if she told to anybody. On 29.08.2015 the petitioner left her at Landran Road by his car. She made a complaint at Helpline No. 181.

3. Immediately after lodging of the FIR, the complainant herein made a statement before the police to the effect that the complaint had been lodged due to anger and any physical relation with the petitioner Pawan Kumar was with her consent. After recording of the statement, a compromise deed Ex. P-2 was effected between the parties namely, the

petitioner and the complainant on 4.10.2015 in which it has been agreed that FIR and all other proceedings taken thereafter be quashed in order to bring an end to the litigation between the parties. Based on the said compromise, the instant quashing petition was filed.

4. By an order dated 5.11.2015, the parties were directed to appear before the Illaqa Magistrate on 17.12.2015 so that their statement could be recorded regarding the genuineness of the compromise. The parties appeared before the Illaqa Magistrate wherein a statement was made there of the complainant that she did not want to pursue the FIR.

5. In normal circumstances, the Court would not entertain a matter when the non compoundable offences are heinous in nature and against the public. In the instant case, the offence complaint of is under Section 376 IPC which is an offence of grave nature. In the eyes of law, the offence of rape is serious and non-compoundable and the Courts should not in the ordinary circumstances interfere and quash the FIR what has been registered. However, there are always exceptions to the normal rules and certain categories of cases, which deserve consideration specially when it is case of love affair between teenagers and on fear of the society and pressure from the community one party alleges rape, cases where the accused and the victim are well known to each other and allegation of rape is levelled only because the accused refused to marry ,as well as the age, educational maturity and the mental capacity, sequences of the same ought to be kept in mind when inclined to interfere.

6. In the instant case, a complaint came to be made in which it

was stated that accused had refused to pay her the amount towards the purchase of the WagonR car (of Maruti make) and subsequently on asking for the amount the accused committed rape. Immediately within a period of two days , the respondent No.2 rescinded her allegations in the FIR and admitted to the physical relationship being consensual in nature. Even a compromise that so arrived between the parties, on the intervention of the respectables of the society in which it was decided that the FIR would not be pursued.

7. In a judgment rendered by the Hon'ble Supreme Court in *Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466*, the Hon'ble Apex Court has laid down certain principles and guidelines which should be kept in mind while quashing of FIRs pertaining to non-compoundable offence. For ready reference paragraphs No. 29.2 and 29.5 are reproduced as under :-

“29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure :

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case.”

8. Even in a judgment rendered by the Hon'ble Supreme Court in ***Madan Mohan Abbot vs State Of Punjab, 2008 (4) SCC 582***, it has been held that it is advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings. Relevant paragraph of the said judgment is reproduced herein below :-

“5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law. We see from the impugned order that the learned Judge has

confused a compounding of an offence with the quashing of proceedings. The outer limit of Rs.250/- which has led to the dismissal of the application is an irrelevant factor in the later case. We accordingly allow the appeal and in the peculiar facts of the case, direct that FIR No.155 dated 17th November 2001 P.S. Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed.”

9. Even in the judgment rendered in ***Gian Singh vs State Of Punjab & Anr, reported as 2012(10) SCC 303*** the basic principle of law as laid down is that where offences are purely private in nature and do not concern public policy, the power to quash proceedings involving non-compoundable offences on the basis of compromise can be exercised.

10. Therefore ,while relying upon the ratios of the aforesaid judgments, this Court is of the view that the compromise which has been entered into for quashing of an offence under Section 376 IPC on the basis of the compromise should be accepted. The complainant is a lady who in a statement recorded in proceedings under Section 161 Cr.P.C. submitted that she had got registered the FIR in a fit of anger on account of the fact that the payment had not been made to her for the car purchased by the accused petitioner herein. In the said statement she also submitted that physical relationship was consensual in nature. It is to be noted that the statement recorded was within a period of two days of lodging of FIR and the compromise arrived at was on 4.10.2015 i.e. within a week of the lodging of the FIR. As has been held in ***Narinder Singh & Ors.*** case (supra) those cases where a settlement is arrived immediately after the alleged commission of the offence the High Court may be liberal in accepting the

settlement to quash the criminal proceedings.

11. Consequently, in view of the above, this petition is allowed and the FIR No. 117 dated 29.08.2015 under Sections 376, 506 IPC registered at Police Station Kharar, District SAS Nagar (Mohali), and all subsequent proceedings arising out of the same are quashed.

03.11.2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No.

refuted