

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

**Criminal Misc. No. M-4313 of 2016
Date of decision: 31.03.2016**

Arjinder Singh and others

..Petitioners

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. Amit Arora, Advocate
for the petitioners.

Daya Chaudhary, J.

Petitioners, namely, Arjinder Singh, Geeta and Gurdeep Kaur, are accused in FIR No.63 dated 21.05.2015 registered under Sections 376, 120-B read with Section 34 of Indian Penal Code at Police Station Beas, Amritsar Rural.

The aforesaid FIR was registered on the basis of complaint made by respondent No.2 alleging therein that petitioner No.1-Arjinder Singh used to come to meet her whenever he came to his maternal Aunt. Subsequently, there was exchange of telephonic calls and she even accompanied the accused and visited the restaurant. Petitioner No.1 gave assurance of marriage and developed physical relations with complainant-respondent No.2 on the

pretext of marriage. Subsequently, with the intervention of family members, the dispute was settled between the parties. An affidavit has also been given by the complainant stating therein that the aforesaid FIR was registered due to some misunderstanding. Complainant-respondent No.2 has also stated that she has no objection in quashing of the FIR and other proceedings.

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR on the basis compromise arrived at between the parties.

Learned counsel for the petitioner submits that the petitioners were falsely implicated in the case whereas no offence is made out against them. Complainant-respondent No.2 has no objection in quashing of the FIR and other proceedings.

Heard arguments of learned counsel for the petitioners and have also perused the allegations levelled in the FIR and other documents available on the file.

As per allegations levelled in the FIR, the physical relations were developed by petitioner No.1 on the pretext of marriage but subsequently, an affidavit has been given by the complainant that the aforesaid FIR was registered due to some misunderstanding.

Offence under Section 376 IPC is non-compoundable and the same cannot be quashed simply by stating that the FIR was registered due to some misunderstanding. Whether any assurance was given or not or there was consent or not, cannot be considered

at this stage as the same is a matter of evidence.

In an offence of serious nature like the present one, to quash the FIR on the basis of compromise is not justified as offence of rape is such an offence, which not only casts stigma on the reputation of a girl but spoils the future prospects as well.

Even if a false case has been registered by the complainant and the physical relations were developed between the parties with mutual consent registration of an FIR against the accused persons also causes great harm to the accused.

Although in case, the complainant does not support the case of the prosecution, the accused can be acquitted of the charge after considering the evidence on record but to quash the FIR in an offence, which is non-compoundable at this stage only on the basis of compromise, would give an adverse message to the society.

In **Yogendra Yadav and others vs. State of Jharkhand and another, 2014(9) SCC 653**, the quashing was sought on the ground that the matter was compromised between the parties. The matter was investigated and the charges were also framed and thereafter, the parties entered into the compromise. An application was moved under Section 231(2) read with Section 311 Cr.P.C. for recalling the witnesses for further cross-examination on the basis of compromise. The question before Hon'ble the Apex Court was as to whether the offences, which are non-compoundable can be compounded. It was held that the offence of rape and murder, cannot

be quashed on the basis of compromise in exercise of powers under Section 482 Cr.P.C. It was also held that the offences, which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that it will have harmful effect on the society as such offence cannot be said to be restricted to two individuals or two groups. In case, such offences are quashed, it may send wrong signal to the society. It was also held that in case, the Court is convinced that the offences are entirely personal in nature and do not affect public peace or tranquility, it should not hesitate to quash them. The relevant portion of said judgment is reproduced as under: -

*“4.Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (**Gian Singh v. State of Punjab, 2012(4) R.C.R. (Criminal) 543: 2012 (4) Recent Apex Judgements (R.A.J.) 549: (2012) 10 SCC 303**). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the*

offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

Same view was held by Hon'ble the Apex Court in

Shimbhu and another vs. State of Haryana, 2014(13) SCC 318.

The relevant portion of the judgment is reproduced as under: -

“22. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence

against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) of IPC.”

By considering the effect of rape and seriousness of offence, certain directions were issued to all the Courts and all civil authorities within the territory of India by Hon'ble the Apex Court in judgment titled as **Delhi Domestic Working Women's Forum vs. Union of India & ors., 1995(1) RCR (Criminal) 194: (1995) 1 SCC 14** which are as under: -

“(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The

role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without

undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.”

Further in **Deepak Gulati vs. State of Haryana, 2013(3)**

RCR (Criminal) 96, Hon'ble the Apex Court has held that any consent given under a misconception of fact, would not be considered as a valid consent and such physical relationship would amount to committing rape. As per Section 90 of the Evidence Act, 1872, if any consent is given under a misconception of fact, the same would not be considered as valid consent and developing physical relationship with the victim on that pretext, would tantamount to committing rape.

The relevant portion of the judgment is reproduced as under: -

“17. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.

18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction

between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

Hon'ble the Apex Court in **State of U.P. vs. Chhoteylal,**

2011(2) SCC 550 has held as under: -

“22. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent

in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court.

In the present case, as per the allegations levelled in the FIR, the physical relations were developed with the victim with a promise to marry. The victim was in such a age group and was not capable of understanding the complications and issues surrounding her marriage. She came closer to the accused by having dreams of marriage but subsequently, he backed out of the same and the present FIR was registered. Later on, she was persuaded to enter into

a compromise and it is evident that in such like cases of rape, the compromise is always effected by considering the future prospects of a girl.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

31.03.2016
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(DAYA CHAUDHARY)
JUDGE