

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

Crl. Misc. M 42317 of 2014 (O&M)
Date of decision: 16.12.2016

Jaspal Singh alias Jassa

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gurmeet Singh Saini, Advocate
for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

Mr. Ajay Kamboj, Advocate,
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of FIR No. 277 dated 30.9.2014 (Annexure P/1) registered under Sections 376/366/34 IPC at Police Station City Ferozepur, District Ferozepur, and all subsequent proceedings arising therefrom in view of the compromise (Annexure P/2).

In brief, the facts of the case are that the aforesaid FIR came to be registered on the statement of respondent No.2—Bholla, who stated that she was got married with one Pipal Singh and out of this wedlock a girl child was born, who is 7 years old. She obtained divorce from her husband and was doing work in the houses of the people for income. On 27.9.2014 at about 9/9.15 p.m., when she was going to see the Ramlilla, the petitioner

along with another person with covered face stopped the motorcycle which they were riding near me and the petitioner held her both hands and forcibly took her on the motorcycle towards Village Khai Fame Ki on Mamdot road and thereafter they raped her. She became unconscious. Thereafter, both the persons fled on their motorcycle from the spot. When she gained consciousness, she reached the Fazilka—Ferozepur road, where some persons took her in their vehicle and dropped her at her home. On 28.9.2014, she explained the entire story to her real sister—Mona who got her admitted in the Civil Hospital for treatment and ultimately got the aforesaid FIR lodged against the petitioner.

When the case came up for hearing on 21.10.2016, learned counsel for the petitioner contended that with the intervention of respectable persons, the matter has been amicably compromised between the parties and they have resolved their disputes and differences and no purpose would be served by allowing the proceedings to continue against the petitioner. It is averred in the petition that investigation is still going on and challan has not been presented as yet.

Keeping in view the fact that the investigation is at the initial stage, challan is yet to be presented and the compromise was arrived at the period of short duration of the alleged occurrence, the parties were directed to appear before Illaqa Magistrate for getting their statements recorded in support of the compromise. In pursuance of the direction, a report has been received from the Chief Judicial Magistrate, Ferozepur,

stating that the compromise arrived at between the parties is without any

pressure or coercion from any one and the same is genuine one.

I have heard learned counsel for the parties and have also gone through the record.

In normal circumstances, this 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.

In a judgment rendered by the Hon'ble Apex 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, 29.5 and 29.7 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.*

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

Even in a judgment rendered by the Hon'ble Apex 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.”

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.

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. It is to be noted that the compromise in the instant case was arrived at the period of short duration of the alleged occurrence 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.

Consequently, keeping in view the fact that the dispute has been amicably settled between the parties, FIR No. 277 dated 30.9.2014 (Annexure P/1) registered under Sections 376/366/34 IPC at Police Station City Ferozepur, District Ferozepur and all subsequent proceedings arising out of the same are quashed.

The petition stands disposed of.

16.12.2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No