

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

CRM-M-657 of 2013 (O&M).
Decided on:-20.09.2016.

Gurmit Singh.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

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

Present:- Mr. Manbir Singh Batth, Advocate
for the petitioner.

Mr. Sultan Singh Gill, DAG, Punjab.

Mr. R.S. Athwal, Advocate
for respondent No.2-complainant.

HARI PAL VERMA, J.

Petitioner Gurmit Singh son of Darshan Singh, resident of Mehatpur, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar has filed the present petition under Section 482 Cr.PC for quashing of FIR No.90 dated 26.09.2009 under Sections 406, 420 and 364 IPC registered at Police Station Balachaur, District S.B.S. Nagar (Annexure P-10) and all subsequent proceedings arising therefrom.

Learned counsel for the petitioner has stated that after registration of the case, the respondent No.2-complainant had entered into a compromise and accordingly, the respondent No.2 submitted an affidavit dated 27.10.2010 stating therein that the complainant does not want to proceed with any legal proceedings against the petitioner-accused. He has further stated that as admitted in the affidavit, the petitioner has already paid

a sum of Rs.2.70 lacs to the respondent-complainant, but after receiving the aforesaid amount, the respondent has backed out from the compromise and has not come forward to accept the said compromise.

The aforesaid FIR was registered on the basis of a complaint submitted by the respondent-complainant with the allegations that the petitioner along with other accused, namely, Darshan Singh son of Sunder Singh and Surjit Kaur wife of Darshan Singh had allured her son Inder Singh for sending him abroad i.e. Germany and accused claimed that they have a Government licence for sending people abroad. The accused stated that they would take Rs.5.60 lacs for sending the said Inder Singh to Germany and would also facilitate his entry to Germany. It is the allegation of the complainant that her son Inder Singh has not been sent to Germany as assured by the accused and in this manner, accused Gurmit Singh has cheated the complainant for a sum of Rs.2.90 lacs.

After registration of the aforesaid FIR, the petitioner had approached this Court for grant of anticipatory bail by way of **CRM-M-9513 of 2010** titled as **Gurmit Singh Versus State of Punjab**. The said petition was allowed by this Court vide order dated October 29, 2010 which reads as under:

*“Present:- Mr. Vikas Bahl, Advocate
for the petitioner.*

Mr. P.S. Bajwa, DAG, Punjab.

*Mr. R.S. Athwal, Advocate
for the complainant.*

M.M.S. BEDI, J. (ORAL)

Affidavit of Kuldeep Kaur with photocopies of the demand draft and banker's cheque has been taken on record.

Without admitted his liability, civil or criminal, the petitioner has paid a sum of Rs.2.70 lacs to the complainant.

Counsel for the complainant has admitted that the money has been received by the complainant.

In view of said circumstances, the petition for pre-arrest bail is allowed making the interim order dated August 10, 2010 as absolute subject to all the condition under Section 438 (2) Cr.P.C.

October 29, 2010

*Sd/-
M.M.S. BEDI
JUDGE”*

The aforementioned order was passed on the basis of affidavit/ compromise dated 27.10.2010 (Annexure P-2) executed by respondent No.2-complainant which reads as under:

“AFFIDAVIT

I, Kuldeep Kaur wife of Sewa Singh, am resident of village Mehatpur Uldani, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar and stated as under:

- (1) That I have lodged an F.I.R. No.90/26.9.09 against Gurmit Singh son of Darshan Singh, resident of Mehatpur Uldani, Tehsil Balachaur, Police Station Balachaur.*
- (2) That according to High Court directions, I have received Rs.2,70,000/- (Rupees Two Lakh Seventy Thousand only) from the above said Gurmit Singh.*

- (3) That now, I do not want to proceed with any legal proceedings against the above said Gurmit Singh.
- (4) That the legal proceedings will remain continue against the rest two persons.
- (5) That Gurmit Singh will cooperate with us in every manner.
- (6) That the above said decision is taken in the Khangri Panchayat.

Sd/
Kuldeep Kaur
Deponent:- Kuldeep Kaur

Verification

Verified that the contents of above mentioned statement are true and correct and nothing has been kept concealed here from.

Dated:- 27.10.2010

Sd/
Kuldeep Kaur
Deponent:- Kuldeep Kaur”

On the basis of compromise so entered between the parties and affidavit dated 27.10.2010 executed by the complainant, the petitioner had filed another **Criminal Misc. No.M-839 of 2011** seeking quashing of the FIR in question on the basis of compromise. But as the respondent No.2-complainant disputed the payment of Rs.2.70 lacs in terms of the compromise, the said petition was dismissed as withdrawn, however, with liberty to the petitioner to file another petition seeking quashing of the FIR on merits.

It is in these circumstances, the petitioner has filed present petition seeking quashing of the FIR in question on merits as the respondent

No.2-complainant has backed out from the compromise after receiving the amount of Rs.2.70 lacs.

Learned counsel for the petitioner has argued that the respondent-complainant has backed out from the compromise after taking the benefit of the amount paid. The payment of Rs.2.70 lacs has not been controverted by the respondent-complainant. He has further stated that the petitioner has been falsely implicated in the present case. The petitioner is a cloth merchant in Delhi and in the year 2007, he came to Balachaur, where Sarpanch Darshan Singh had informed him that complainant Kuldeep Kaur had given some money to agents, namely, Puneet Sharma and Pankaj Sharma who are brothers and are living in Delhi, for sending her son Inderjit Singh abroad. But duo brothers were not returning the said money. The complainant had come to the Sarpanch for help. Said Darshan Singh had stated that since he was not well conversant about Delhi, therefore, he had requested the petitioner to try and track the said agents whose office was otherwise not known to the complainant. Accordingly, the petitioner had put his sincere efforts and with great difficulty, he could find out the whereabouts of aforesaid agents. Pursuantly, the agents, namely, Puneet Sharma and Pankaj Sharma had issued two cheques bearing No.892833 dated 21.3.2007 and 892834 dated 21.4.2007 for Rs.4 lacs each totalling Rs.8 lacs to Narinder Singh, son of complainant Kuldeep Kaur, who accompanied the petitioner and accordingly, the respondent No.2-complainant had submitted affidavit (Annexure P-6) admitting the receipt of

cheques.

Learned counsel for the petitioner has further argued that on the basis of affidavits Annexures P-6 and P-7, it can safely be stated that the complainant had paid money to Puneet Sharma and Pankaj Sharma to the tune of Rs.9 lacs and has also admitted that two cheques were given by said Pankaj Sharma. In relation to that, she has received some money from the aforesaid persons, but the respondent No.2 has involved the petitioner illegally when the petitioner has refused to be a witness in the case. He has further contended that once the respondent-complainant has furnished a duly sworn affidavit admitting receipt of money and has further undertook not to proceed with any legal proceedings against the petitioner, the complainant cannot back out from her affidavit and, therefore, the FIR in question is liable to be quashed.

Learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in ***Mohd. Shamim Versus Smt. Nahid Begum 2005(1) RCR (Criminal) 697*** to contend that when the parties have entered into a compromise and complainant-respondent No.2 Kuldeep Kaur accepted money in terms of said compromise, she cannot back out from the affidavit submitted by her. Reliance has also been placed upon another judgment of Hon'ble Supreme Court in ***Ruchi Agarwal Versus Amit Kumar Agrawal 2004(4) RCR (Criminal) 949*** where in the matrimonial proceedings, the parties had entered into a compromise and got divorce by mutual consent, but the wife did not withdraw the FIR under Sections 498-A

and 506 IPC despite compromise. The Apex Court had quashed the FIR by observing that the wife wanted to harass the husband even after getting the relief. In support of his contentions, learned counsel for the petitioner has also relied upon the judgments of this Court in ***Lakhwinder Singh Versus State of Punjab 2000(4) RCR (Criminal) 104***; ***Gian Chand Versus State of Punjab 2003(2) RCR (Criminal) 384*** and ***Deepak Arora Versus State of Haryana and another 2015(7) RCR (Criminal) 649***.

On the other hand, learned counsel for respondent No.2-complainant has argued that the very affidavit dated 27.10.2010 (Annexure P-2) as submitted by respondent No.2-complainant was confined only for the purposes of grant of anticipatory bail to the petitioner and in this manner, the said affidavit has to be read to that limited extent only. He has further contended that the whereabouts of Inderjit Singh son of the complainant are not known to the complainant till date and, therefore, in view of Section 108 of the Evidence Act, 1872, the burden of proving that said Inderjit Singh is alive, is strictly on the accused. He has further stated that Inderjit Singh has not been heard of for more than 7 years by those who naturally would have heard of him if he had been alive. Therefore, the burden of proving that he is alive is solely on the petitioner-accused.

I have heard learned counsel for the parties.

There is no dispute that respondent No.2-complainant Kuldeep Kaur has submitted affidavit dated 27.10.2010 (Annexure P-2) which has been reproduced hereinabove. In the said affidavit, she, in unequivocal

terms, has stated that according to the High Court directions, she has received Rs.2.70 lacs from the petitioner-accused and she does not want to proceed with any legal proceedings against petitioner Gurmit Singh. However, legal proceedings will continue against the remaining two persons. The decision was statedly taken in the Khangri Panchayat. There is no rider in the said affidavit. She has been enjoying the money so received since the year 2010. Even on 18.12.2013, when this case came up for hearing, this Court had adjourned the same requiring the counsel for respondent No.2 to seek instructions as to whether respondent No.2 is ready to return the amount of Rs.2.70 lacs to the petitioner as received by her in terms of affidavit dated 27.10.2010. Thereafter, for 3 years, the said money was not returned and on 7.9.2016, this Court had adjourned the case for today i.e. 20.9.2016 requiring the counsel for respondent No.2 to seek instructions in the case.

Today, learned counsel for respondent No.2 has stated that the respondent No.2 is ready to return the amount to the petitioner. However, enjoying money for almost 6 years and offer to return the same at this stage, cannot be accepted. The conduct of respondent No.2 shows that she intends to bargain in the matter. Once respondent No.2 has submitted an affidavit accepting the compromise and pursuant thereof, has received Rs.2.70 lacs, it does not behove her to back out from the compromise.

The argument of learned counsel for respondent No.2-complainant that whereabouts of Inderjit Singh son of the complainant are

not known to her, cannot be accepted as no attempts have been made by the complainant to initiate any proceedings in this regard. Moreover, no such material has been placed on record by learned counsel for respondent No.2. Even in the reply submitted by the State, no such material has come on record that whereabouts of Inderjit Singh son of the complainant are not known to her. Further more, even the police has submitted the cancellation report in the case, but when the Court has not accepted the same, the Challan has been presented. Thus, the respondent No.2 has legal remedies available to her to know the whereabouts of her son, but no such material has been brought on record to substantiate such efforts.

Looking at the entirety of the facts and circumstances of the case and noticing the fact that the respondent No.2-complainant has submitted an affidavit in support of the compromise and in consequence thereof, has received Rs.2.70 lacs from the petitioner-accused, the complainant cannot be allowed to misuse the process of law by pursuing the matter even after submission of the compromise/affidavit. It is not the case of respondent No.2 that she has ever pleaded that the said compromise/affidavit was obtained under duress or by committing fraud or misrepresentation. She has availed the benefit of settlement and has enjoyed the amount of Rs.2.70 lacs in the year 2010.

In the case of ***Ram Lal and others Versus State of Haryana and another 2008(2) RCR (Criminal) 823***, it was held by this Court that when the parties have entered into a compromise, but the complainant has

backed out from the same, the FIR is liable to be quashed in such like situation. The relevant paragraph of the said judgment reads as under:

*“4. Learned counsel for the petitioners by placing reliance upon the judgment of Hon'ble Supreme Court in the case of **Mohd. Shamim v. Smt. Nahid Begum, 2005 (1) RCR (criminal) 697: 2005(1) Apex Criminal 299 (SC)** contends that in view of the compromise having been entered into between the parties and amount having been received by the complainant, the continuation of proceedings is nothing but misuse of the process of the Court. The Hon'ble Supreme Court has been pleased to observe as under:-*

*14. This Court in **Ruchi Agarwal vs. Amit Kumar Agrawal & Ors. [2004 (8) Supreme 525]**, in almost a similar situation has quashed a criminal proceeding against the husband, stating : "....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.*

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue...."

Therefore, taking into consideration the judgment passed by this Court in **Ram Lal and others' case (supra)** and **Criminal Misc.No.M-41417 of 2015** titled as **Naresh Kumar Versus State of Haryana and another**

decided on May 09, 2016, the respondent No.2-complainant cannot be permitted to back out from her affidavit dated 27.10.2010 (Annexure P-2) particularly when she has received the consideration towards full and final settlement and has specifically mentioned in the said affidavit that she does not want to proceed with any legal proceedings against petitioner Gurmit Singh. The backing out of respondent No.2-complainant from the compromise shows her greed.

Accordingly, the present petition is allowed and FIR No.90 dated 26.09.2009 under Sections 406, 420 and 364 IPC registered at Police Station Balachaur, District S.B.S. Nagar (Annexure P-10) and all consequential proceedings arising therefrom are quashed qua petitioner-accused Gurmit Singh only.

September 20, 2016

Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No