

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

**CRM No. M-1118 of 2016
Date of decision: 16.03.2017**

Rakesh Kumar and others

..... Petitioners.

Versus

State of Punjab and another

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Surinder Sharma, Advocate, for the petitioners.

Ms. Shivali, AAG, Punjab

Mr. Naveen Sharma, Advocate, for respondent No.2.

LISA GILL, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 85 dated 05.06.2008 (**Annexure P-1**) registered under Sections 406,498-A, 506,323,34 of the Indian Penal Code (for short 'IPC') at Police Station City South, Moga, Punjab as well as judgment and order dated 30.03.2015, passed by the learned Judicial Magistrate 1st Class, Moga, on the basis of an amicable settlement (**Annexure P-5**) arrived at between the parties.

The above said FIR was registered at the behest of respondent No. 2-Smt. Parveen Kanta. The dispute arose between the parties because of matrimonial discord between petitioner No. 1- Rakesh Kumar and respondent No.2- Parveen Kanta. Vide judgment and order dated 30.03.2015, passed by the learned Judicial Magistrate 1st Class, Moga, the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of three years; besides pay a fine of Rs. 1,000/- and in default

thereof undergo rigorous imprisonment for a period of one month for the offence punishable under Section 498-A read with Section 34 of the IPC. They have also been sentenced for varying terms and pay fine for the offences punishable under Sections 406,323,506,34 of the IPC.

During the pendency of the appeal preferred by the petitioners before the learned Additional Sessions Judge, Moga challenging judgment and order dated 30.03.2015, a settlement was arrived at between the parties. Copy of the settlement dated 10.12.2015 is attached as Annexure P-5 with this petition. Petitioner No. 1 and respondent No. 2 have decided to part ways. It is submitted that a petition under Section 13- B of the Hindu Marriage Act, 1955 filed by petitioner No.1 and respondent No. 2 has since been allowed on 17.07.2016. It is submitted that respondent No. 2 no longer wishes to pursue the matter. The parties wish to carry on with their respective lives in peace and harmony after putting an end to the acrimony amongst them. Thus, it would be in the interest of justice to quash the aforementioned FIR and set aside judgment and order of conviction dated 30.03.2015

Learned counsel for the petitioners relies upon a Division Bench Judgment of this Court in the case of **Sube Singh and another Vs. State of Haryana and another** 2013 (4) RCR(Criminal) 102 to submit that there is no impediment to quashing of an FIR at the appellate stage to secure the ends of justice.

This Court on 16.11.2016 directed the parties to appear before the learned appellate Court on 16.12.2016 for recording their statements in respect to the above-mentioned compromise. Learned appellate Court was directed to submit a report regarding the genuineness of the compromise, as to whether it

has been arrived at out of the free will and volition of the parties without any coercion, fear or undue influence.

Pursuant to order dated 16.11.2016, the parties appeared before the learned Additional Sessions Judge, Moga and their statements were recorded on 16.12.2016. Respondent No.2-Smt. Parveen Kanta has stated that the entire dispute between the parties has been resolved amicably. The settlement has been arrived at voluntarily, out of her own free will, without any fear, greed, threat or pressure. Respondent No. 2 states that there is no objection in case the above mentioned FIR is quashed against all the accused persons. Joint statement of all the four petitioners in respect to the settlement was recorded.

As per report dated 22.12.2016, submitted by the learned Additional Sessions Judge, Moga, it is opined that the compromise between the parties is genuine, arrived at voluntarily, without any sort of pressure or threat from any corner.

Learned counsel for the complainant/respondent No.2 affirms and verifies the factum of settlement between the parties. It is submitted that respondent No. 2 has no objection, whatsoever to the quashing of the aforementioned FIR and consequent setting aside of the judgment and order dated 30.03.2015, passed by the learned Judicial Magistrate 1st Class, Moga.

Learned counsel for the State on instructions from HC Hardev Singh submits that the present being a matrimonial dispute, the State has no objection to the quashing of this FIR on the basis of a settlement between the parties.

In **Kulwinder Singh and others versus State of Punjab and another** 2007 (3) R.C.R. (Criminal) 1052, a five member Bench of this Court has observed as under:-

“The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Criminal Procedure Code is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is “finest hour of justice”.

The Hon'ble Supreme Court in **B.S.Joshi and others v. State of Haryana**, 2003(4) SCC 675 has observed that it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

A division bench of this Court in Sube Singh's case (supra) has held as under:-

“The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non-compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.”

It is held in the abovesaid case that there is no embargo against invoking the power under Section 482 Cr.P.C after the conviction of an accused by the trial court and during the pendency of appeal against such conviction.

In the instant case, FIR No. 85 dated 05.06.2008 is a fall out of a matrimonial dispute between the parties. The matter has been amicably resolved between the parties who wish to give a quietus to the entire issue and carry on with their lives. Report dated 22.12.2016 submitted by the learned Addl. District & Sessions Judge, Moga establishes that the compromise

between the parties is genuine, bonafide and arrived at out of their own free will. Therefore, non-acceptance of this compromise would lead to denial of complete justice to parties.

Keeping in view of the facts and circumstances of this case, this petition is allowed. The judgment and order dated 30.03.2015 passed by the learned Judicial Magistrate 1st Class, Moga is set aside on the basis of the settlement arrived at between the parties. FIR No. 85 dated 05.06.2008 registered under Sections 406,498-A, 506,323,34 of the IPC at Police Station City South, Moga, alongwith all consequential proceedings are hereby quashed. Resultantly, the appeal preferred by the petitioners is rendered infructuous and shall be so declared by the learned Ist Appellate Court at Moga.

(LISA GILL)
JUDGE

16.03.2017
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Whether speaking/reasoned : *Yes/No.*

Whether reportable : *Yes/No.*