

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

-.-

Crl. Misc. M 31841 of 2015
Date of decision: 24.04.2017

Harish Sharma

..... Petitioner

Versus

State of Punjab and another

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Karambir Singh Kahlon, Advocate
for the petitioner

Mr. Mikhail Kad, AAG, Punjab

Mr. Anil Bansal, Advocate
for respondent No. 2

-.-

Rekha Mittal, J.

Through the present petition filed under Section 482 of the Code of Criminal Procedure (in short, 'Cr.P.C.'), the petitioner prays for quashing of FIR No. 95 dated 21.07.2015 for offence punishable under Sections 376, 420 and 323 of the Indian Penal Code (in short, 'IPC') registered with Police Station Division No. 1, Pathankot, District Pathankot and proceedings emanating therefrom.

Counsel for the petitioner contends that respondent No. 2 was major at the time of lodging of this FIR and after registration of the case, the petitioner and respondent No. 2 have performed marriage on 28.07.2015 and out of their wedlock, a female child has been born. It is also submitted that the petitioner and respondent No. 2 are residing together as husband

and wife, leading a happy married life with their minor child.

As dispute between the petitioner and respondent No. 2 has been settled by way of compromise (Annexure P3), vide order dated 12.01.2017, the parties were directed to appear before the Illaqa Magistrate/trial Court to get their statements recorded with regard to genuineness of compromise/settlement.

Pursuant thereto, a report has been submitted by the Additional Chief Judicial Magistrate, Pathankot, wherein it has been reported that statements of the parties have been recorded and they have voluntarily compromised the matter.

Counsel for the State and respondent No. 2 have not disputed that dispute between the parties has been settled, they have performed marriage on 28.07.2015 and out of their wedlock, a female child was born. It has been argued by counsel for the complainant that in view of developments, subsequent to registration of FIR and in the interest of marital harmony between the petitioner and respondent No. 2, it would be in the interest of justice to quash the criminal proceedings irrespective of the fact that offence under Section 376 IPC is grave in nature and cannot be allowed to be quashed on the basis of compromise in ordinary circumstances.

I have heard Counsel for the parties and perused the records.

Before advertng to the submissions made by Counsel for the parties, it is pertinent to mention that Hon'ble the Supreme Court of India in ***Gian Singh v. State of Punjab, 2012 (4) R.C.R. (Criminal) 543*** while dealing with jurisdiction of the High Courts to quash the criminal

proceedings in non-compoundable offences on the basis of compromise has held that in serious offences like murder, rape, dacoity etc. or other offences of mental depravity under the Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or offences committed by a public servant while working in that capacity as the settlement between the offender and victim can have no legal sanction at all, quashing petitions on the basis of compromise should not be allowed.

The question which invites answer is, whether the petition can be dismissed merely because the petitioner has been booked for committing offence punishable under Section 376 IPC irrespective of nature of allegations, age of the prosecutrix and subsequent developments highlighted by Counsel for the parties.

In the present case, after registration of FIR, the petitioner and respondent No. 2 have performed marriage on 28.07.2015 and out of their wedlock, a female child has been born. There is no contest between the parties that they are leading a happy married life along with their child. That being so, if the criminal proceedings are not put to an end, it may result in marital disharmony.

Looked from another angle, as respondent No. 2-prosecutrix has performed marriage with the petitioner, there is no possibility of her supporting the charge in case the petitioner is put to trial. In the circumstances, I am of the considered opinion that continuation of the criminal proceedings would be nothing but a mockery in which the wife would be called in the witness box to depose against her husband but in all probability, she would give a statement in his favour. Hence, there is a

remote and bleak rather no possibility of the trial culminating in the judgment of conviction even if allowed to proceed with. In this context, reference can be made to the judgment of this Court ***Yogesh Handa v. State of Punjab and another, 2013(4) R.C.R. (Criminal) 472.***

In view of the above, I have no hesitation to conclude that continuation of criminal proceedings would be counter productive and may boomerang to unsettle what has been settled between the parties by way of compromise whereby grievance expressed by the complainant in the FIR has been duly redressed.

In this view of the matter, the petition is allowed and FIR No. 95 dated 21.07.2015 for offence punishable under Sections 376, 420 and 323 IPC registered with Police Station Division No. 1, Pathankot, District Pathankot and proceedings emanating therefrom stand quashed qua the petitioner.

(Rekha Mittal)
Judge

24.04.2017
mohan bimbra

Whether speaking/reasoned	:	Yes/No
whether reportable	:	Yes/No