

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

Crl. Misc. M-33993 of 2017 (O&M)

Date of Decision: October 31, 2017

Naresh alias Bholu

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. T.P.S. Teji, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG Haryana.

Mr. Lajpat Sharma, Advocate
for the complainant.

JAISHREE THAKUR, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.338 dated 22.06.2017 registered under Section 4 of POCSO Act at Police Station Gannaur, District Sonapat (Annexure P/1) and all subsequent proceedings arising therefrom in view of the compromise.

2. In brief, the facts of the case are that the instant FIR came to be registered on 22.06.2017 under Section 4 of POCSO Act, in which it was stated that about 2-3 months ago, the accused-petitioner started talking to the complainant and they became friend. On 29.05.2017, the accused made a telephonic call to the complainant and asked her to go in a hotel for having meal. Thereafter, the complainant and accused reached at Leema

Hotel and they both took a meal there. It is mentioned that on the pretext of performing marriage with her, the accused forcibly committed rape upon her in the hotel room and thereafter, they kept on talking on phone. On 21.06.2017, accused called her at Sindhu Border on the pretext of performing marriage, but the accused did not come there. It is submitted that accused committed rape upon her on the pretext of performing marriage.

3. After lodging of the FIR, the complainant herein swore an affidavit and made a statement to the effect that the matter has been compromised. It is stated in the petition, that due to the misunderstanding the case FIR was lodged by the complainant. In a connected matter bearing Crl. Misc. M-35486 of 2017 wherein, the petitioner herein has sought regular bail in the instant FIR, a contention had been raised that the matter has been compromised between the parties and in terms of the said compromise, the petitioner is to get married to the prosecutrix. Considering the peculiar facts and circumstances of the case, by an order dated 27.09.2017 the petitioner was released on interim bail, in order to enable him to marry the prosecutrix. This court is informed that in terms of the said compromise, the petitioner and the prosecutrix have performed the marriage on 08.10.2017 and a photocopy of the marriage certificate is also produced on record. It is prayed that the FIR and all other proceedings taken thereafter be quashed in order to bring an end to the litigation between the parties. Based on the said compromise, the instant quashing petition was filed.

4. The petitioner and complainant are present in court today.

Learned counsel appearing on behalf of the petitioner and respondent No.2 argued that parties have since compromised the matter and relied upon affidavit/compromise Annexures P-2 to P-4 which are of complainant-respondent No.2, her father and mother, in which it is stated that matter stands compromised with the petitioner and in terms of the compromise, both the petitioner and complainant-respondent No.2 wanted to marry each other. Today, complainant/respondent No.2 Manisha, who is present in court along with her counsel Mr. Lajpat Sharma, Advocate has furnished an affidavit swearing therein that in terms of the compromise, she and the petitioner have solemnized the marriage on 08.10.2017 at Delhi as per Hindu rites ceremonies with the blessings of parents of both the parties. After marriage, they are living happily as husband and wife at the house of present petitioner.

5. In normal circumstances, the Court would not entertain a matter when the non compoundable offences are heinous and serious in nature. In the instant case, the offence complained of is under Section 376 IPC which is an offence of grave nature. This court is aware of the fact that time and again it has been held that an offence under Section 376 IPC is a grievous offence and considered as an offence against the society at large and thus, such matters should not be compromised. In the eyes of law, the offence of rape is serious and non-compoundable and the Courts should not in ordinary circumstances interfere and quash the FIR that has been registered.

6. In the instant case, a reading of the FIR would show that both the complainant and petitioner had an affair and they got into physical relationship. They were in relationship for some time and when the

petitioner did not solemnize marriage with her, the instant FIR came to be lodged. It is thereafter that a compromise has been arrived at between the parties and in terms of the compromise, both the petitioner and complainant have solemnized their marriage on 08.10.2017 and living happily as husband and wife. This court is of the opinion that in case, the proceedings are not allowed to be compromised, the complainant herself would be put to hardship. Since the parties have amicably settled their dispute, continuance of criminal prosecution would be an exercise in futility, as the chances of ultimate conviction are bleak.

7. In a judgment rendered by the Hon'ble Supreme 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 noncompoundable offence. For ready reference paragraphs No. 29.2 and 29.5 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.”

8. Even in a judgment rendered by the Hon'ble Supreme 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.

6. 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.”

9. 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.

10. 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. As has been held in ***Narinder Singh & Ors.*** case (supra) those cases where a settlement is arrived at immediately after the alleged commission of the offence the High Court may be liberal in accepting the settlement to quash the criminal proceedings.

11. Consequently, keeping in view the peculiar facts and circumstances of the present case and in view of the above ratios of law, this petition is allowed and the FIR No.338 dated 22.06.2017 registered under Section 4 of POCSO Act at Police Station Gannaur, District Sonapat and all subsequent proceedings arising out of the same are quashed.

October 31, 2017

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
Yes/No