

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

**CRM No. M-39397 of 2016
Date of decision: 12.05.2017**

Sukhwinder Singh

..... Petitioner.

Versus

State of Punjab and others

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amandeep Saini, Advocate, for the petitioner.

Mr. K.D. Sachdeva, Addl.A.G., Punjab.

Mr. R.S. Sekhon, Advocate for respondents No.2.

LISA GILL, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 191 dated 05.10.2016 (**Annexure P-1**) registered under Sections 376, 511 of the Indian Penal Code (for short 'IPC') at Police Station Jandiala, District Amritsar and all other consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that a bare reading of the FIR does not disclose the commission of the offence punishable under Section 376 read with Section 511 of the IPC. The petitioner and respondent No. 2 are neighbours. It is solely due to a misunderstanding that the above said FIR was registered against the petitioner. It is admitted by respondent No. 2 that she could not identify the petitioner properly as it was night time when the incident in question occurred. It is further stated by respondent No. 2 that in this situation she has no objection to the quashing of the above said FIR against the petitioner. Reference is made to affidavit of respondent No. 2 dated 14.10.2016 (Annexure P-2). The investigating

agency, it is submitted is neither presenting the challan against the petitioner nor submitting a cancellation report.

It is further submitted that pursuant to order dated 07.11.2016 of this Court, the parties appeared before the learned Judicial Magistrate 1st Class, Amritsar on 28.11.2016. It is stated by respondent No. 2 that she has no objection in case the above said FIR against the petitioner is quashed. Respondent No. 2 stated that she was not under any kind of threat, pressure or coercion. Statement of the petitioner in respect to the settlement was also recorded.

As per report dated 13.12.2016, submitted by the learned Judicial Magistrate 1st Class, Amritsar it is opined that the statements have been suffered by the parties without any fear or pressure. The petitioner is not a proclaimed offender.

Learned counsel for the complainant/respondent No. 2 reiterates the factual aspect as above. It is submitted that the petitioner had been named by respondent No. 2 due to a mistaken belief. He was not properly identified at the time of the alleged occurrence. It is reiterated that respondent No. 2 has no objection to the quashing of the above said FIR against the petitioner.

Learned counsel for the State on instructions from HC Sukhdev Singh affirms that the final report in this case has not been filed. Affidavit of the complainant/respondent No.2 dated 14.10.2016 (Annexure P-2) has been received by the investigating agency.

This Court would have no hesitation in dismissing a petition seeking quashing of a FIR under Section 376 read with Section 511 of the IPC solely on the basis of a compromise. However, in the present case, it cannot be ignored that respondent No. 2 has specifically stated in her affidavit dated

14.10.2016 that the petitioner was named at the instance of some people of the village. He could not be identified properly by her at the time of occurrence on the intervening night of 4/5.10.2016 as there was no proper source of light at that time. Respondent No. 2 admittedly stated that she has no objection to the quashing of the said FIR against the petitioner. She has suffered a statement before the learned Judicial Magistrate 1st Class, Amritsar in this regard. The learned Judicial Magistrate 1st Class, Amritsar has found her statement to be genuine and suffered without any fear or pressure. The settlement between the parties is opined to be genuine in the said report dated 13.12.2016. Therefore, the present is a case where the complainant categorically asserts that the accused petitioner was not the person involved in the commission of the offence in question. It is in this situation that the settlement has been arrived at between the parties.

In the given factual matrix, the chances of conviction of the petitioner in this case are obviously bleak. No useful purpose would be served by continuance of the present proceedings. It will only lead to wastage of precious time of the court and would be an exercise in futility.

Keeping in view the facts and circumstances of the present case, this petition is allowed. FIR No. 191 dated 05.10.2016, registered under Sections 376, 511 of the IPC at Police Station Jandiala, District Amritsar alongwith all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

12.05.2017

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(LISA GILL)
JUDGE

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