

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

CRM-M-39132-2017

Date of decision: 20.11.2017

Deepak alias Bachchi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.HS Jugait, Advocate for the petitioner

Ms.Mahima Yashpal, AAG, Haryana

Mr.NS Chahal, Advocate for respondent No.2.

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of First Information Report No.53 dated 5.7.2016 registered under Sections 341, 504 and 506 of the Indian Penal Code and Section 11(iv) and 12 The Protection of Children from Sexual Offences Act, 2012 (for short 'Act 2012') at Police Station Women, Ambala on the basis of the compromise.

It is contended by learned counsel for the petitioner that the both the parties are living in the same village. Now the matter has been compromised between the parties and a compromise deed dated 11.10.2017 has been written in this regard.

Learned counsel for respondent No.2 submits that now the

matter has been compromised and she has no objection if the FIR in question is quashed.

Learned State counsel however has seriously opposed the prayer of the petitioner contending that the offence alleged against the petitioner is a serious one and any settlement between the petitioner and the complainant cannot have any legal sanction and therefore, merely on the ground of the settlement between the parties, the criminal proceedings cannot be quashed at this stage.

Heard.

The present FIR was registered on the basis of the statement of respondent No.2, mother of the victim. In her statement, the complainant stated that the accused/ petitioner had been committing ill treatment with her daughter for the last 8-10 months. He extended threats by obstructing her way while going to school. He also abused and used to chase the girl upto her school. The victim/prosecutrix was aged 14 years.

In Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others, SLP (Crl.) No.9549 of 2016, decided on 4.10.2017 Hon'ble the Supreme Court has held as under:

“15 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision

does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and

serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and

(ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the

offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

The relevant extract of the judgment rendered in **Jagar Singh vs. State of H.P. 2015(2) RCR (Criminal) 320 (H.P.)**, is as under:-

“xxxx Allegations of sexual assault are increasing in the society day by day. As per Ruling of Hon'ble Apex Court of India, Court should be sensitive in sexual assault cases. As per Section 30 of the Protection of Children from Sexual Offences Act 2012 there is presumption of culpable mental state and onus is upon the accused to prove that he had no such mental state. The fact whether accused had no such mental state or not cannot be decided at this stage. The same fact will be decided on merits after giving due opportunity to both the parties to lead evidence in support of their case. As per Section 42-A of Protection of Children from Sexual Offences Act 2012 provisions of POCSO Act shall have overriding effect on the provisions of other law to the extent of inconsistency.”

“xxxx It is well settled law that Protection of Children from Sexual Offences Act 2012 is a special Act enacted for protection of minors children and it is well settled law that Court is the guardian of minors and it is also well settled law that when two interpretations are possible then interpretation favourable to the minors should be adopted by Court

in the ends of justice.”

In the present case, the allegations levelled in the First Information Report against the petitioner are having a bearing on a vital societal interest and to quash the FIR at this stage on the basis of the compromise would only send an adverse message to the society. In the considered opinion of this Court, even though there is a settlement between the parties, the criminal proceedings initiated for the alleged offence cannot be quashed. Considering the welfare of the child, any attempt to get serious matters like this compounded has to be discouraged. Section 482 Cr.P.C. is not a shelter to grave criminals indulging in such dastardly acts. The Court feels that it would be not in the interest of the society to quash the FIR on the ground that a settlement has been arrived at with the complainant. In view of the ratio laid down in the above decisions, the power under Section 482 of Cr.P.C. cannot be exercised in the present set of facts and circumstances.

Consequently, the present petition is dismissed.

20.11.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No