

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

**CRM-M No.7020 of 2017 (O&M)
Decided on: 27.04.2017**

Balwinder Kaur and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Krishan Sehajpal, Advocate
for the petitioners.

REKHA MITTAL, J.

CRM No.11472 of 2017

Heard.

Allowed as prayed for.

Statements of PW1 and PW3 are taken on record subject to
just exceptions.

Disposed of accordingly.

CRM-M No.7020 of 2017

The petitioners have invoked Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') for quashing of FIR No.200 dated 29.12.2012 under Sections 354, 509 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Morinda, District Rupnagar and all consequential proceedings on the basis of compromise dated 20.02.2017.

Counsel for the petitioners has submitted that Jaspreet Singh – petitioner No.2 is a Doctor by profession and running his Homeopathic Clinic for the past 35 years. He has good reputation in the

area and there is no complaint against his conduct/behaviour. Balwinder Kaur – petitioner No.1 is assisting the petitioner No.2, in the Clinic, as a Nurse.

The complainant was a regular patient and was taking medicine from the petitioners. She suspected that she suffers from breast cancer and due to this reason, petitioner No.2 checked her properly but the complainant misunderstood that Doctor had an evil eye towards her and got lodged false FIR against the petitioners. It is further submitted that misunderstanding of respondent No.2 has been cleared and she has no grievance against the petitioners and for that reason she has effected a compromise with the petitioners. It is further argued that as the parties have settled the dispute by way of compromise (Annexure P2), the aforesaid FIR and proceedings emanating therefrom are liable to be quashed.

I have heard counsel for the petitioners and perused the paperbook.

Concededly, Manjeet Kaur aged 38 years, resident of village Mataur, Tehsil Anandpur Sahib, District Rupnagar, complainant had been a patient of Dr. Jaspreet Singh – petitioner No.2 who is practicing in homeopathic at Morinda under the name of J.P. Homeopathic Clinic. Respondent No.2 lodged the FIR on the allegations that on 28.12.2012, she along with her sister-in-law Rashpal Kaur came to the clinic of petitioner No.2 for taking medicine. They reached the clinic at 02:00 PM and there were three patients already sitting there. The Doctor gave medicine to those patients but in the

meantime, another patient came there and the Doctor started attending to that patient. Respondent No.2 and Rashpal Kaur made a request to the Doctor to get her medicine first as they had to travel some distance. The Doctor replied that they can go by train at 02:30 PM but by that time it was already 03:00 PM. On complainant's raising an issue about time, the Doctor said that he has three cars and in case she wanted to go in a car with red beacon, the same can also come. In case they are feeling hungry he will make them to have food. Thereafter, the Doctor said that a small test is to be conducted by the Madam (referring to petitioner No.1). Petitioner No.1 went upstairs and the Doctor asked the complainant to go upstairs. The complainant again raised an issue that as she needs medicine for cervical and has already explained her difficulty, there is no need of test. The Doctor replied that as there are scars on her face, the same would also be cleared with medicine. The Doctor told her to take medicine for cervical as well as scars on her face. On asking of the Doctor, the complainant went upstairs. The Doctor also came upstairs. Petitioner No.1 who was available upstairs stealthily left the place. The Doctor closed the door and showed the photographs of his wife by saying that she also had scars on her face and the same have been cleared by doing test. The Doctor made her to lie on a bench and asked her to remove the salwar for conducting test. She refused to remove the salwar by saying that first Madam should be called. The Doctor said that Madam has already left for taking lunch. The Doctor started rotating his hands on her breasts and said that cancer can be caused by formation of nodules and nothing should be concealed

from him. He further said that whatever he talks in the room the same cannot go beyond the room as the room is soundproof. If any person from your side comes to me he would not tell about the medicine. He asked her as to what her husband does and he may be taking intoxicants. She replied that her husband is not an addict and he is Amritdhari. The Doctor further said that in case her husband is not able to satisfy her then she can get herself satisfied by oiling her finger. She protested against all this and went downstairs after opening the door.

The complainant has levelled serious allegations against petitioner No.2. The relationship between a Doctor and a patient is full of trust and confidence. If a Doctor aged about 60 years has indulged in such a nefarious/notorious act with his patient, it is difficult to accept that he can be liberated from the alleged illegality by invoking extraordinary jurisdiction under Section 482 Cr.P.C., required to be exercised only to achieve twin purposes of preventing abuse and misuse of process of law and miscarriage of justice.

Taking into consideration gravity of allegations raised against petitioner No.2 coupled with status of petitioner No.2 being a professional as a Homeopathic Practitioner, I find it extremely difficult to accept that the criminal proceedings are liable to be quashed on the basis of compromise. One thing more to be added here is that on completion of investigation, challan was presented in the Court and the complainant has already been examined in the case and reiterated her version given to the police.

To be fair to the petitioners, counsel has relied upon certain

judgments *"P.Ramaswamy vs State (U.T.) of Andaman and Nicobar Islands"*, 2013(3) RCR (Criminal) 760 (SC), *"Surat Singh vs State of Uttaranchal (Now Uttarakhand) and another"*, 2013(1) RCR (Criminal) 1011 (SC). Further reference has been made to judgments of this Court where offence under Section 354 IPC has been quashed on the basis of compromise *"Mahinder Singh vs State of Punjab and another"*, 2016(3) RCR (Criminal) 786 and *"Roop Asre @ Sunny vs State of Haryana and others"*, 2016(2) RCR (Criminal) 252.

In *P. Ramaswamy case (supra)* the petitioner was charged for committing offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 354 IPC. He was acquitted of the offence under the Scheduled Castes Act but was convicted under Section 354 IPC and sentenced to rigorous imprisonment for a period of 06 months. At the relevant time, offence under Section 354 IPC was compoundable as per Section 320 Cr.P.C. In those circumstances, Hon'ble the Supreme Court allowed compounding of offence under Section 354 IPC.

Similarly, in *Surat Singh case (supra)* offence under Section 354 IPC was allowed to be compounded under Section 320 Cr.P.C. However, at present offence under Section 354 IPC is not compoundable.

This Court allowed quashing of the criminal proceedings on the basis of compromise under Section 354 IPC in the cited judgments but there is no reference to the facts involved in those cases. Counsel for the petitioner has failed to draw any similarity between the

allegations levelled by the prosecutrix in those cases viz-a-viz the case at hand where a patient had levelled serious allegations against a practicing Doctor. Under the circumstances, the petitioners cannot derive any advantage to their contentions from the referred authorities.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the controversy nor would cause prejudice to the accused at the time of final disposal of the case on merits.

27.04.2017
yakub

(REKHA MITTAL)
JUDGE

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