

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

CRM-M No. 7297 of 2017(O&M)

Date of decision: 7.4.2017

Paramjit Singh

....Petitioner

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. R.K. Thind, Advocate for the petitioner.

Mr. Amit Jaiswal, Advocate for the respondent.

REKHA MITTAL, J.

By invoking Section 482 Cr.P.C., the petitioner prays for quashing of FIR No. 155 dated 26.11.2016 for offence punishable under Sections 376, 328 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station City Gharinda, District Amritsar Rural on the basis of compromise and affidavit dated 13.02.2017 (Annexures P-3 and P-4).

The prosecutrix – complainant/respondent No.2 lodged the instant FIR on the allegations that she has started a Boutique in a shop in the main bazaar at village Gharinda. In front of her shop, there is a shop of Paramjit Singh son of Gajjan Singh. Paramjit Singh gave a call on her mobile phone and also sent repeated messages. She disclosed this fact to her husband and mother-in-law Sita Rani. Her mother-in-law Sita Rani went to the house of Paramjit Singh and talked to Gajjan Singh, his father, Kulwinder Singh and Sukhwinder Kaur in regard to misconduct of

Paramjit Singh. Surinder Kumar, her husband had also gone to the shop of Paramjit Singh in this connection.

On 11.10.2016 at about 10:30 PM, Paramjit Singh entered her house by scaling a wall. Her husband Surinder Kumar was on night duty but Sita Rani her mother-in-law, her children and family of her brother-in-law Madan Lal were at home. Paramjit Singh made her to inhale some intoxicant and thereafter committed rape with her. When she regained consciousness, she raised noise. Her mother-in-law came to her room and the accused gave her a push and ran away.

Counsel for the petitioner has submitted that as the petitioner and the complainant have entered into a compromise with an intent to live in peace and harmony, criminal proceedings initiated against the petitioner are liable to be quashed. In support of her contention that offence under Section 376 IPC can be quashed on the basis of compromise, she has referred to judgments of this Court **Sewa Singh Vs. State of Punjab and another, 2010(25) RCR (Criminal) 51**; **Talwinder Singh @ Laddi and another Vs. State of Punjab and another, 2008(3) RCR (Criminal) 970**. Further reference has been made to judgment of Hon'ble the Supreme Court of India **Ravindra Vs. State of Madhya Pradesh, 2015(2) RCR (Criminal) 124** wherein sentence for offence under Section 376(2) (g) was reduced to the period already undergone as the parties had entered into a compromise.

I have heard counsel for the petitioner, perused the paper-book and the judgments cited at bar.

Before advertng to the submissions made by counsel for the petitioner, it would be appropriate to deal with the judgments referred to by

counsel for the petitioner. In **Sewa Singh's case** (supra), this Court after taking note of the fact that the complainant and her mother have furnished duly sworn affidavits that the complainant has solemnized marriage with Gurditta son of Joginder Singh and they have apprehension that continuation of the proceedings will ruin matrimonial life of Seema and by relying upon the judgments **Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR (Criminal) 1052; Madan Mohan Abbot vs. Sate of Punjab, 2008(4) S.C. Cases 582; Surinder Kamboj and others Vs. State of Punjab and another, 2008(1) RCR (Criminal) 21 and Talwinder Singh @ Laddu Vs. State of Punjab, 2008(3) RCR (Criminal) 970**, has held in para 13 and 14, quoted thus:-

“13. As stated above, normally, the Courts should exercise restrain while cutting short the prosecution in such like cases. The facts appear to be different in the present case.

14. In the present case, respondent No. 2 is happily settled in her matrimonial life. Quashing of the FIR in the facts of the present case will rather secure the ends of justice as for continuation of the trial, she will have to make various visits to the Court. Thus, if her past comes to the fore, her marriage may break down. Her mother is also standing with her and equally concerned that her daughter must be allowed to move on in her life.”

In **Talwinder Singh @ Laddi and another's** case (supra), this Court allowed quashing of the proceedings by recording following observations in para 5 of the judgment, read thus:-

“5. Compromise in modern society is the sine qua non of harmony and orderly behaviour. As observed by Krishna Iyer J., the finest hour of justice arrives propitiously when parties despite falling apart, bury the hatchet and weave a sense of fellowship of reunion. Inherent power of the Court under Section 482 Cr.P.C is not limited to matrimonial cases alone. The Court has wide powers to quash the proceedings even in

noncompoundable offences in order to prevent abuse of process of law and to secure ends of justice, notwithstanding bar under Section 320 Cr.P.C. Exercise of power in a given situation will depend on facts of each case. The duty of the Court is not only to decide a lis between the parties after a protracted litigation but it is a vital and extra-ordinary instrument to maintain and control social order. Resolution of dispute by way of compromise between two warring groups should be encouraged unless such compromise is abhorrent to lawful composition of society or would promote savagery, as held in Kulwinder Singh's case (supra).

Hon'ble the Supreme Court of India in **Ravindra's case** (supra) allowed reduction in sentence to the period already undergone for the reason that the incident was 20 years old; parties entered into a compromise and are now married (not with each other).

The cases in which this Court allowed quashing of criminal proceedings for offence punishable under Section 376 IPC were decided in the year 2010 and 2008 respectively and at that time, judgment of the Supreme Court in **Gian Singh v. State of Punjab and another', 2012 (4) R.C.R. (Criminal) 543** was not in existence.

In **Gian Singh's case** (supra), the Apex Court while dealing with powers of the High Court under Section 482 of the Code in regard to quashing of criminal proceedings made the following observations:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have

settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

A perusal of the aforesaid extract would evident that the Supreme Court has categorically held that heinous and serious offences of mental depravity or offences qua murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the

offender have settled the dispute. It is further held that such offences are not private in nature and have serious impact on society.

In the light of ratio laid down in Gian Singh's case (supra), the petitioner cannot derive any advantage to his contentions from the judgments passed by the Single Benches of this Court. So far as the judgment in Ravindra's case (supra) it has nowhere been held by the Court that proceedings in regard to offence under Section 376 IPC can be quashed on the basis of compromise by the High Court in exercise of extra-ordinary jurisdiction under Section 482 Cr.P.C. On the contrary, Hon'ble the Apex Court by taking into consideration the peculiar facts and circumstances had decided to reduce the sentence to the period already undergone by the appellant but his conviction for the charged offence has been sustained despite compromise between the parties.

For the foregoing reasons, the petitioner cannot claim that the FIR and proceedings emanating therefrom qua offence under Section 376 IPC are liable to be quashed merely on the premise that the parties have entered into a compromise. That being so, the petition fails and is accordingly dismissed in limine.

APRIL 7, 2017

'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no