

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

Crl. Misc. No.M-1111 of 2017(O&M)

Date of Decision: 07.05.2018

Ashok Kumar

.. Petitioner

Vs.

State of Punjab & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Arun Takhi, Advocate
for the petitioner.**

Mr. Pawan Sharda, Sr. DAG Punjab.

**Ms. Suminderdeep Kaur, Advocate for
Mr. Rajeev K. Kapila, Advocate
for respondent No.2-complainant.**

ANITA CHAUDHRY, J.

The petitioner is seeking quashing of FIR No. 131 dated 12.12.2012 registered against him under Sections 406 and 498-A IPC at Police Station Garhshankar and subsequent proceedings arising therefrom.

The facts necessary for the disposal of the instant petition are noticed first.

Marriage of petitioner was solemnized with respondent No.2 on 13.05.2011. It appears that the couple could not adjust with each other and consequently the petitioner filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage on 03.08.2012. An application was

submitted by respondent No.2 to the police alleging that she was harassed and maltreated by the husband and the in-laws for dowry and her istridhan had been misappropriated by them. After an enquiry, FIR No. 131 dated 12.12.2012 was registered under Sections 406 and 498-A IPC at Police Station Garhshankar. After investigation, the police filed challan against the petitioner while the in-laws names were kept in column No.2. Charge was framed against the petitioner and after examination of witnesses, an application under Section 319 Cr.P.C. was filed.

The petitioner has sought quashing of the FIR on the ground that the matter had been compromised and a sum of Rs.2,70,000/- was paid to respondent No. by way of demand draft No. 881391 dated 06.04.2015 (Annexure P-2) and after having received the amount, respondent No.2 assured to give statement in favour of the petitioner in the divorce petition as well as in the pending criminal trial. Complying with the agreement respondent No.2 and her witnesses had tendered their affidavits in the divorce petition case and they did not turn up for cross-examination and closed their evidence, leading to the passing of decree of divorce dated 10.04.2015. According to learned counsel, pursuant to compromise respondent No.2 had received the amount, but she backed out therefrom and refused to make a statement before the trial Court, which cannot be permitted and continuation of criminal proceedings against the petitioner are an abuse of process of law. He has relied upon **Shlok Bhardwaj Vs. Runika Bhardwaj & Ors. 2015(2) SCC 721, Kamal Kishore & Ors. Vs. State of Punjab & Anr. 2006(2) RCR(Crl.) 342 and Mohd. Shamim Vs. Smt. Nahid Begum, 2005 (1) RCR(Crl.) 697.**

In the reply filed by the State the lodging of FIR and filing of

challan against the petitioner was not disputed. It was averred that the petitioner was found instrumental in harassing and maltreating the petitioner for want to dowry and challan was filed and the trial Court has framed charges against him and the petition is not maintainable.

The complainant-respondent No.2 in the reply admitted that respondent No.2 had received Rs.2.70 lacs from the petitioner, but it was claimed that the compromise was actually for Rs.5 lacs and the petitioner wants to avoid the payment of remaining amount and has filed the instant quashing petition.

In the rejoinder filed by the petitioner, it was denied that the compromise was for Rs.5 lacs. It was reiterated that the amount settled was Rs.2.70 lacs, which admittedly was paid by the petitioner to respondent No.2. According to learned counsel for the petitioner, there is a strong presumption that compromise had been effected for Rs.2.70 lacs and after receiving the amount, respondent No.2 did not contest the divorce petition and produced herself and her witnesses for cross-examination.

I have heard learned counsel for the parties and have gone through the record carefully.

The petitioner is claiming that one time settlement was effected for Rs.2.70 lacs, whereas according to respondent No.2 the amount settled was Rs.5 lacs, out of which Rs.2.70 lacs was paid by the petitioner at the time of making statement in the divorce petition and the remaining amount was to be paid at the time of withdrawal of the FIR, but he failed to honour the same and filed the instant petition just to avoid payment of the remaining amount.

There is no dispute that a compromise was effected. The

compromise was not reduced into writing but was oral. The petitioner claims that since respondent No.2 and her witnesses did not come forward for cross-examination, therefore a presumption be drawn that the compromise was duly acted upon. The FIR cannot be quashed only on the basis of presumptions. No proof has been produced on record by the petitioner to prove that the compromise was for Rs.2.70 lacs or Rs.5 lacs. He failed to show that it was respondent No.2 who backed out therefrom. No writing was made. The petitioner cannot take advantage of cases referred by him namely Kamal Kishore, Shlok Bhardwaj and Mohd. Shamim(supra) because in the case in hand it has not been proved by the petitioner that it was respondent No.2 who had backed out from the compromise, rather this is a case where the petitioner has failed to establish that the compromise was for Rs.2.70 lacs.

For the reasons above, the petition is dismissed. If so advised, the petitioner may seek recovery of the amount paid to respondent No.2, in accordance with law.

May 07, 2018
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No