

CRM-M-18231-2017 (O&M)

Date of decision : 15.12.2018.

Ajay Kumar and others

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRYPresent: Mr. SPS Sidhu, Advocate
for the petitioners.

Ms. Jaspreet Kaur, AAG, Punjab.

None for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

The instant petition is for quashing of FIR No.49 dated 22.05.2016 registered under Sections 406, 498-A, 323, 120-B IPC at Police Station Jaito, District Faridkot and the consequent proceedings arising out of the same, on the basis of compromise arrived at between the parties.

Petitioner no.1 is the husband whereas petitioners no.2 & 3 are the father-in-law and the mother-in-law of the complainant and petitioners No.4 & 5 are the sister-in-law and brother-in-law. The FIR was registered in May, 2016. The petitioners claim that after the registration of the FIR a compromise was effected between the parties and it was agreed that the complainant would get the FIR quashed. A petition under Section 13-B of the Hindu Marriage Act was filed and the marriage between petitioner no.1 and respondent No.2 was dissolved on 11.04.2017.

The petitioners have filed the present petition seeking quashing of the FIR in view of the compromise. The petitioners have approached this Court pleading that they had complied with all the conditions of compromise and since the matter has been settled finally and divorce had been granted and payment had been made, therefore, the FIR *qua* them should be quashed.

Notice was issued to respondent No.2 but no one had appeared on her behalf despite service.

Counsel for the petitioners has referred to the copy of judgment and decree passed in the petition filed under Section 13-B of the Hindu Marriage Act (Annexure P-4) and has urged that a sum of Rs.8,00,000/- had been paid to the complainant towards life time maintenance. Counsel for the petitioners also refers the the statements (Annexure P-2 & P-3) made by the parties in the petition filed under Section 13-B of the Hindu Marriage Act wherein the complainant admitted that she had received Rs.8,00,000/- from petitioner no.1 for the settlement and she had undertaken to appear before the High Court for quashing of present FIR registered against petitioner no.1 and his family members.

Hon'ble the Apex Court in **Ruchi Agarwal Vs. Amit Kumar Agarwal** 2004(4) RCR (Crl.) 949 has held as under:-

“4. In the compromise petition, referred to herein above, both the parties had agreed to withdraw all the civil and criminal cases filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No. 63 of 2002 on the file of the Family Court, Nainital which was a complaint filed under Section 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant

and on the basis of the terms of the compromise, said case came to be dismissed. However, so far as the complaint under Sections 498A, 323 and 506 Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject matter of this appeal, the appellant did not take any steps to withdraw the same. It is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

5. From the above narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received Stridhan and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings civil and criminal filed and initiated by her against the respondents within one month of the compromise deed which included the complaint under Sections 498A, 323 and 506 Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent-husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

6. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13(B) of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

7. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant

to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Criminal Procedure Code proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”

A perusal of the petition filed under Section 13-B of the Hindu Marriage Act shows that a compromise was effected between the parties. In the proceedings filed under Section 13-B of the Hindu Marriage Act, a sum of Rs.8,00,000/- had been given to the complainant. There is also reference to the fact that the complainant had admitted that she would appear before the High Court for quashing of present FIR. Respondent no.2 is now backing out of the compromise, which is out of greed or for reasons better known to her.

In this view of the matter, the Court is of the considered opinion that continuance of prosecution against the petitioners would be an abuse of process of law. Reference can also be made to **Mohd. Shamim Vs. Smt. Nahid Begum, 2005(1) RCR(CrL) 697, Rajesh & Ors. Vs. State of**

Haryana & Ors. 2013(1) Law Herald (P&H) 909, Shlok Bhardwaj Vs. Runika Bhardwaj & Ors. 2015(1) RCR(Crl.) 249 and Jitender Bhargav Vs. State of Haryana & Anr. (Crl.Misc.No.M-34829 of 2014, decided by this Court on 21.05.2015).

Furthermore, in the case of *State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)*, the Hon'ble Supreme Court had observed that where continuance of prosecution is abuse of process of law, the Court would be within its power to quash the complaint/FIR.

There is no legal impediment in exercising the powers under Section 482 Cr.P.C. considering the facts of the case. Therefore, in view of the discussion made above, the instant petition is allowed and the impugned FIR and consequent proceedings thereto, *qua* petitioners are quashed.

(ANITA CHAUDHRY)
JUDGE

December 15, 2018

ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No