

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

Crl. Misc. M 23141 of 2018 (O&M)
Date of decision: 5.7.2018

Kuldeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. AK Walia, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of FIR No. 14 dated 27.1.2017 (Annexure P/1) registered under Sections 376/506 IPC at Police Station Fatehgarh Sahib, and all subsequent proceedings arising therefrom.

2. In brief, the facts are that the aforesaid FIR came to be registered by the complainant—Punam Devi—respondent No.2, stating that she met the petitioner on 24.1.2017 at Gurdwara Amb Sahib, Mohali, when he told her that he would secure some private job for her and gave her his mobile number also. On 27.1.2017, at about 9 a.m. the petitioner phoned up the complainant and told her that he would arrange a meeting with some officers in connection with the job and she should come to Gurdwara Amb Sahib. Consequently, she arrived at Gurdwara Amb Sahib, where from the petitioner took her to Palm Restaurant and told her that the said officer is coming over there. Thereafter, he took the complainant to a room, where he forcibly committed rape on her.

3. Learned counsel for the petitioner submits that in fact the

petitioner and respondent No.2 had met each other about one year and four months prior to registration of the present FIR and developed intimacy and one day they went to Palm Restaurant and stayed there in a room and had physical relation with the petitioner of her own free will and consent and without any pressure or allurements. However, during the course of that relationship, because of some misunderstanding, a quarrel took place between them and respondent No.2 went away from the room and in the heat of the moment submitted an application leveling allegation of rape against the petitioner. He further submits that now the matter has been compromised between the complainant and the petitioner herein, as no incident, as alleged, had ever taken place. In support of his contentions, he relies on the affidavit duly sworn by the complainant wherein she has stated that she along with the petitioner had gone to Palm Restaurant where she had physical relation with the petitioner out of her own free will. It is further argued that the prosecutrix herself has admitted that they exchanged hot words in the room and since the petitioner used foul language and slapped her, she turned furious and got recorded the FIR against the petitioner. In fact she simply wanted to teach a lesson to the petitioner. It is also argued that there are remote chances of conviction since the matter already stands settled between the parties where it has been recorded that the FIR was got recorded under a mis-apprehension. Reliance is placed on the judgment rendered by the Hon'ble Apex Court in ***Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466***, to quash the FIR, in view of the principles and guidelines laid down by the Hon'ble Apex Court pertaining to non-compoundable offences. For ready reference paragraphs No. 29.2 and 29.5 are reproduced as under :-

“29.2. When the parties have reached the settlement and on that

basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure : (i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.5. *While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case.”*

4. However, the Hon'ble Apex Court in **State of Madhya Pradesh Versus Madan Lal (2015) 7 Supreme Court Cases 681**, while dealing with the situation like in the present case observed as under:-

*“Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable. In this context, it is profitable to reproduce a passage from **Shimbhu and Another v. State of Haryana (2014) 13 SCC 318**, wherein, a three-Judge Bench has ruled thus:-*

“Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every

chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC.”

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We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is

thoroughly and completely sans legal permissibility.”

5. The offence under Section 376 IPC is a non-compoundable and considered as an offence against the society at large and can not be quashed easily. Even though both the petitioner and the complainant have pressed for the quashing of the FIR on the basis that continuance of the same will cause undue harassment to the prosecutrix, this court is unable to quash the FIR, in view of the law as settled in **Madan Lal's case (supra)**.

6. The present petition deserves to be dismissed. Ordered accordingly.

5.7.2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No