

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

**CRM-33614-2018 in/and
Crl. Misc. M-24384-2018 (O&M)
Date of Decision: 25.09.2018**

Amarpreet Singh Sohal and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Satbir Rathore, Advocate
for the petitioners.

Mr. P.P. Chahar, DAG, Haryana.

Dr. Payel Mehta, Advocate
Legal Aid Counsel (HCLSC) with
Complainant-respondent No.2 in person.

JAISHREE THAKUR, J. (Oral)

1. This is a petition that has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 378 dated 15.07.2015 registered under Sections 406, 498-A, 323 of Indian Penal Code at Police Station DLF II, Gurgaon, District Gurgaon and all subsequent proceedings arising there from in view of the compromise (Annexure P/ 2).

2. Learned counsel for the petitioners contends that after the registration of the FIR, the matter was compromised between the parties on the

intervention of the respectable of the society. As per the compromise (Annexure P/2) it was agreed that the petitioners herein would pay a sum of ₹ 70,00,000/- (Seventy Lakhs only) to the respondent no2 –complainant (the respondent No.2 for short) , out of which amount, petitioners issued a Cheque of Rs. 50,00,000/- (Rupees Fifty Lacs) vide Cheque No. 000170 drawn on HDFC Bank, Anand Lok Branch, New Delhi dated 09.02.2018 and post dated Four Cheques bearing numbers 000171, 000172, 000173 of ₹ 5,00,000/- each dated 09.08.2018, 09.02.2019, 09.08.2019 and 09.02.2020 respectively in favour of the respondent drawn on HDFC Bank, Anand Lok Branch, New Delhi.

3. The petitioners also undertook in the said compromise to ensure clearance of the said Cheques at the time of its presentation in the Bank. In the said compromise it was also agreed that the respondent No.2 herein would hand over the physical custody of two minor children namely Amrita Kaur Sohal (DOB 07.08.2003) and Master Angad Sohal (DOB 03.04.2006) along with their passports and birth certificates to the petitioners. The respondent No.2 herein was also to withdraw case filed under the Domestic Violence Act on receipt of cheque of ₹50,00,000/- with the condition that the respondent No.2 would also have the visitation rights as per the convenience of the children. Other terms and conditions were also mentioned, one of them being that both the minor children would be enrolled in a boarding school from the beginning of the new session starting in 2018. It was also mentioned in the said compromise that the rights of the minor children would be kept alive and they would be entitled to inheritance of property of their father namely petitioner No.1. Learned counsel for the petitioner further contends that despite respondent No.2 having received ₹50,00,000/- and having en-cashed one cheque of ₹5,00,000/- in August, 2018, she has not come forward to have the FIR quashed.

4. Notice of motion was issued in the said petition and appearance has

been caused by the complainant herself, who requested for an appointment of legal aid counsel as she was not in a position to engage the one herself. Dr. Payal Mehta, Advocate had been appointed as the Legal Aid Counsel to assist the Court as well as to appear on behalf of respondent No.2

5. Today an application bearing **CRM 33614-2018** has been preferred by the respondent No.2 in which it is stated that two minor children who have been enrolled in the Guru Nanak Fifth Centenary School in Mussoorie, which is affiliated with ICSE Board. It is contended that the children have been enrolled in the said school without their consent and due to change of school education and difference in the study pattern; the children are not able to cope up with the studies. It is contended that the children have filed a petition under the Guardians and Wards Act on 17.04.2018 before the District Judge, Family Court, Gurgaon. It is further contended that the children should be called to appear before this Court and they should be asked regarding their willingness and interest as to where they want to live.

6. I have heard the learned counsel for the parties and have also gone through the terms of the compromise that have been arrived at. A perusal of the Annexure P/2 would reflect that the said compromise has been arrived at between A.S. Sohal-petitioner No.1 and the respondent No.2 before the Family Court at Gurgaon and after having received ₹50,00,000/- the respondent-complainant has also en-cashed another ₹5,00,000/- Cheque which was dated 9th August, 2018.

7. This Court is not inclined to go into the issue raised by the complainant-respondent No.2 i.e. to summon the children here to know as to whether or not they are happy in their current boarding school, since they have already approached the Family Court, Gurgaon seeking redressal of their rights.

8. The only question before this Court is whether or not the petitioners herein are entitled to have the FIR quashed on the ground that they have complied

with the terms and conditions as mentioned in the compromise. A perusal of the compromise clearly reflects that the respondent No.2 had entered into the compromise before the courts below and had accepted and received a sum of ₹ 70 lakhs (₹ 50 lakhs in Cheque and 4 posted dated cheques of ₹5 lakhs each) as a full and final settlement. At the relevant time respondent No.2 agreed that the custody of the minor children should be handed over to their father and grandparents who in turn would educate them and send them to a boarding school, which has been done. The minor children are studying in **Guru Nanak Fifth Centenary School** which is a boarding school in Mussoorie which is a reputed school.

9. The respondent No.2, in person, raised a concern that the minor children were not happy and that they should be allowed to decide where they wanted to stay. This argument cannot be made a ground for not quashing the FIR since the respondent No.2 herself handed over the physical custody of the minor children along with their birth certificates and passports. Moreover, an offer was made to the respondent No.2 by the Court , that in case she would like to have the compromise set aside, she could return the amount so received. This offer was not taken up. The objection as raised by the respondent No.2 for not quashing the aforesaid FIR is totally unfounded especially after receiving the settled amount. At this stage it does not behoove her to oppose the quashing of the FIR.

10. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of **State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors.** (2014) 15 SCC 29 has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In the instant case, when the matter stands settled between the parties

and the respondent in terms of the compromise has received her settlement and the petitioners on their part have also complied with the terms and conditions as specified there under ,it would be an abuse of the process of law in case proceedings are allowed to continue.

11. In similar circumstances the Supreme Court in **Ruchi Aggarwal vs. Amit Kumar Aggarwal (2005) 3 SCC 299** observed as under:

" Therefore we are of the opinion that the appellant having receive the relief she wanted without contest on the basis of terms of compromises , we cannot now accept the argument of the learned counsel for the appeallant . 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 haraas the respondents".

12. However, before parting with this judgment, it is stated that the petition filed by the minor children under Guardians and Wards Act, 1890 before the District Judge, Family Court, Gurgaon would be decided on its own merit.

13. In view of above discussion, this petition is allowed and FIR No. 378 dated 15.07.2015 registered under Sections 406, 498-A, 323 of Indian Penal Code at Police Station DLF II, Gurgaon, District Gurgaon and all subsequent proceedings arising therefrom in view of the compromise (Annexure P/ 2) are quashed . In view of the above, the application i.e. **CRM 33614-2018** also stands dismissed.

14. Registry is directed to pay the fee of Legal Aid Counsel Dr. Payel Mehta as per the rules.

September 25, 2018

seema

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
Yes/No