

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-32698 of 2016
Date of Decision: 14.8.2018**

Sandeep Gupta and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Nitin Thatai, Advocate
for the petitioners.

Mr. Jagmohan Ghumman, DAG, Punjab.

Mr. K.S.Kang, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

This a petition filed under Section 482 Cr.P.C. seeking quashing of FIR No. 158 dated 28.4.2010 registered under Sections 406, 498-A IPC, Police Station Kotwali, Patiala (Annexure P-2) and all the consequent proceedings arising out of the same.

The petitioners on the first hearing had stated that a compromise was effected on 2.4.2012 and had referred to all the payments which had been received by respondent No. 2. Subsequently a petition under Section 13-B of the Hindu Marriage Act had been filed and respondent No. 2 had made a statement in the Court that she had received all past, present and future maintenance from the husband. She thereafter failed to appear for the second motion. Pursuant to the compromise, the police filed a cancellation report. Respondent No. 2 did not come forward

for getting the FIR quashed. Upon this assertion, notice was ordered to be issued and presentation of challan was stayed.

Notice was given to the respondents. Respondent No. 2 chose not to file reply though the case had been adjourned thrice. Both the parties were called in the Court.

Respondent No. 2 had appeared on 9.8.2018 and had stated that she had not made any statement before the Court below or in the proceedings initiated under Section 13-B of the Hindu Marriage Act. When the order was being dictated, respondent No. 2 stated that she did not remember whether any statement was made. She was asked to file an affidavit.

Respondent No. 2 has filed a short affidavit and she now admits that an amicable settlement had been effected and asserts that she had not received any alimony of compensation from the husband and the compromise could not be concluded on account of non-payment of consideration. Respondent No. 2 admits to have made a statement before the District Judge, Patiala on 25.4.2012. It was stated that she had only received Rs. 6 lacs which was prior to the compromise and pertained to the dowry amount and noted in the petition bearing No. CRM-M-17861-2010.

State has filed their reply pleading that during the pendency of the case, respondent No. 2 had submitted an affidavit Annexure P-5 before the investigating officer that a compromise has been effected and all the matters have been settled and therefore, on the basis of that affidavit they had prepared a cancellation report and had submitted to the Court on 23.9.2015. However, the trial Court had returned the same for further investigation and investigation is going on.

I have heard both the sides.

Counsel for the petitioners contends that the wife had entered into a settlement and later she had backed out and does not support the petitioner, therefore it was a fit case where an FIR should be cancelled. It was urged that respondent No. 2 had received the entire amount and therefore she had joined the petitioner and submitted a joint petition seeking mutual divorce and respondent No. 2 had made a statement in the Court on oath stating therein that she would have no objection if the husband and in-laws are acquitted and she would not raise any claim against her husband and in-laws in future and affidavit was also submitted to the police and therefore they had prepared a cancellation report. Referring to Annexure P-7, the counsel points out that in the statement made on 25.4.2012, respondent No. 2 had stated that she had received her entire dowry articles and they had settled all their disputes and the husband would withdraw his cases pending in Ludhiana Courts and the husband would also move a quashing petition before the High Court and she would appear to make the statement. Counsel further contends that respondent No. 2 failed to appear and now the stand taken by them is that they had not received the entire amount. Counsel also submits that had that been the case and if any payment was due, there was no reason for her absence in the Court and she could have made a statement in the Court. It was also urged that after having received the amount, they were backing out and therefore they had not appeared. Counsel further submits that the petitioners had lodged an FIR against them under Section 420 IPC and had named the person before whom the payment had been made. It was urged that after having arrived at an amicable settlement and after making a statement that she had settled all her

disputes, she could not be allowed to back out and it was a fit case where the proceedings should be quashed. Reliance was placed upon ***Mohd. Shamim versus Smt. Nahid Begum 2005(1) R.C.R. (Criminal) 697, Raj Kumar and others versus State of Punjab and another 2016(1) RCR (Criminal) 60, Deepak Arora versus State of Haryana and another 2015(7) RCR (Criminal) 649, Sandip Somany versus State of Haryana and another 2016(2) Law Herald 1305, Ravinder Kumar Kohli and others versus State of Punjab and another 2011(5) R.C.R. (Criminal) 20 and Nirmal Sachdeva versus State of Haryana and another 2008(2) Crl. CC 865.***

State counsel submits that respondent No. 2 had given an affidavit to the police and on the basis of that, cancellation report was prepared and was submitted in the Court but the trial Court returned the same for further investigation. It is also contended that challan had not been presented.

Counsel for respondent No. 2 states that an agreement was arrived at and Rs. 15 lacs was to be paid for full and final payment of the disputes and only Rs. 6 lacs was paid which is noted in the order passed in CRM-M-25591-2010 (Annexure P-3) and the petitioners have not produced any evidence to show that the amount was paid towards alimony or future maintenance. The counsel refers to the facts given in Annexure P-2 and urges that a sum of Rs. 8 lacs was paid in cash and that amount was to be returned along with the gold ornaments and those had not been returned and therefore since the terms of the settlement had not been completed therefore respondent No. 2 and even the petitioners failed to appear in the Court at the time of second motion.

Respondent No. 2 has chosen not to file their reply though they were given the opportunity. It appears that they did not want to commit anything.

Respondent No. 2 was called in the Court. She had appeared and had denied that she had appeared before the District Judge to make her statement though she admitted that a petition for mutual divorce had been filed. She was asked to give an affidavit and when the order was being dictated she stated that she did not remember whether any statement was made. In the short affidavit filed by respondent No. 2, she has again taken a somersault and admits to have made a statement before the District Judge on 25.4.2012.

Copy of the statement signed by the parties is available on record. The affidavit given by respondent No. 2 (Annexure P-8) is also available on record which was attested on 12.4.2012. The statement made in the Court is clear and unambiguous. Respondent No. 2 had agreed that there was a settlement. She had agreed to appear and make the statement in the Court. No statement was made by her regarding non receipt of the amount or that any amount was due. She failed to appear before the District Judge for her second statement. It is true that the petitioners side also did not appear. The statement given by respondent No. 2 before the District Judge was not hedged with any condition. She did not state that she was to receive any further amount. The petitioners assert that the agreement was settled at Rs. 15 lacs and they had paid the entire amount and since respondent No. 2 was backing out therefore they had got an FIR registered of cheating. Admittedly, an FIR was registered on the complaint given by petitioner No. 1.

In the present case, the wife has backed out of the agreement. It is not her case that affidavit sworn by her was by misrepresentation. She does not dispute that she had made statement before the District Judge in the petition filed under Section 13-B of the Hindu Marriage Act. There she admits to have received a lump-sum amount towards her past, present and future maintenance in the petition filed under Section 13-B of the Hindu Marriage Act which was signed by her. She had admitted to have received all her dowry articles and the statement made before the Court on 25.4.2012. She had agreed that she would make a statement in favour of the petitioners for quashing of the FIR. In the light of this, she cannot be allowed to back out of the settlement. The police has also prepared a cancellation report on her affidavit. The police agencies have also acted on that affidavit. Therefore, allowing the continuation of criminal proceedings at the instance of the wife will cause miscarriage of justice.

Considering the peculiar facts and circumstances of the case noted above, this Court is of the considered view that the present petition deserves to be allowed.

The petition is allowed. Consequently, the aforesaid FIR and all consequent proceedings arising therefrom are quashed qua the petitioners.

(ANITA CHAUDHRY)
JUDGE

August 14, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No