

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

Crl. Misc. M- 38395 of 2018 (O&M)
Date of Decision: 20.12.2018

Ajay Kumar and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G.P.S. Pathania, Advocate
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab.

None for respondent No.2.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of FIR No. 32 dated 7.6.2017 (Annexure P/1) registered under Sections 406, 498-A, 34 IPC at Police Station Kanwan, District Pathankot, and all subsequent proceedings arising therefrom in view of the compromise (Annexure P/3).

2. In brief, the facts are that a marriage was solemnized between petitioner No.1 and respondent No.2 on 30.11.2011 at Dinanagar, as per Hindu rites and ceremonies. No child was born out of this wedlock. Thereafter, a matrimonial dispute arose between the parties, which led to the registration of the aforesaid FIR. As the parties were living separately since 11.9.2013, they mutually decided to seek termination of the marriage by filling a petition under Section 13-B of the Hindu Marriage Act for a decree

of divorce by mutual consent. In terms of the settlement arrived at between the parties, the said petition has been allowed and the marriage between the parties has been dissolved by way of mutual consent, vide judgment dated 24.9.2018 passed by the District Judge, Pathankot, a photocopy of which has been filed in Court and the same is taken on record. As is evident from the judgment, the matter has been fully and finally settled between the parties. Petitioner No.1 has agreed to pay a lump sum amount of ₹5 lakhs to the complainant/respondent No.2 towards her past, present and future maintenance. It was also agreed that both the parties would withdraw their respective litigation filed against each other, including the present FIR.

3. Learned counsel for the petitioners contends that after having got a decree of divorce and permanent alimony, the complainant is not coming forth to give a statement regarding quashing of the present FIR.

4. Learned counsel for the petitioners relies on the judgments rendered by the Supreme Court in **Ruchi Agarwal Versus Amit Kumar Agarwal 2004 (4) RCR (Criminal) 949** and **Mohd. Shamim Versus Smt. Nahid Begum 2005 (1) RCR (Criminal) 697** to contend that in similar circumstances, the Supreme Court had quashed the FIR when the wife was not coming forth to withdraw the FIR, despite availing all the benefit under the compromise.

5. I have heard learned counsel for the petitioner as well as the learned State counsel and have also perused the pleadings as well as the decree of divorce that has been granted to the parties.

6. At the outset, it is noted that notice of motion in this case was

served for today. As per the office report, respondent No.2 refused to take the notice. Under the circumstances, this Court is not left with any option but to proceed with the case in accordance with law.

7. Admittedly, a settlement/agreement came into effect between the parties on 25.4.2018. In terms of the compromise, the petitioners herein have made the full payment of ₹5,00,000/- to the respondent No.2 as full and final settlement for the past, present and future maintenance. In terms of the said agreement, the parties had decided that both the parties would withdraw their respective litigation filed against each other, including the present FIR.

8. It is settled law that the inherent power of the High Court under Section 482 of the Code of Criminal Procedure 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 No.2 in terms of the compromise has received her permanent alimony and also suffered a statement before the Family Court that she would help in getting the FIR quashed, continuation of proceedings under the FIR would be an abuse of the process of law. As the complainant has not contested the matter, the proceedings under the FIR deserve to be quashed.

In similar circumstances, the Apex Court in ***Ruchi Agarwal's case (supra)***

has observed as under :-

“8.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.”

9. In view of the above discussion, it appears that the respondent No.2 is not deliberately stepping in to give her statement for quashing of the FIR, despite having agreed for the same. Consequently, this petition is allowed. FIR No. 32 dated 7.6.2017 (Annexure P/1) registered under Sections 406, 498-A, 34 IPC at Police Station Kanwan, District Pathankot, and all subsequent proceedings arising therefrom are hereby quashed.

20.12.2018

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No