

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

Crl. Misc. M-42377 of 2017 (O&M)

Date of Decision: January 16, 2018

Ashok Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil Agnihotri, Advocate
for the petitioner.

Mrs. Anju Arora, Addl. AG Punjab.

Mr. Vishal Munjal, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.231 dated 20.10.2017 registered under Sections 376, 511, 451 of Indian Penal Code at Police Tanda, District Hoshiarpur (Annexure P/1) and all subsequent proceedings arising therefrom in view of the compromise (Annexure P/2).

2. In brief, the facts of the case are that the instant FIR came to be registered on 20.10.2017 on the statement of Raj Kaur that when she and her sister-in-law were sleeping in their rooms with children, then Ashok Kumar s/o Jarnail Singh, who is her husband's real Maasi's son was standing near her bed. She got scared on seeing him and asked him that what he is doing here. On this, he closed her mouth with his hand and pulled string of

her *salwar* with intention to outrage her modesty.

3. Immediately, after lodging of the FIR on 20.10.2017, the complainant compromised the matter with the petitioner herein on 23.10.2017. It is stated in the compromise that the complainant has got the instant FIR registered against the petitioner under pressure, because accused had covered his face with cloth and she could not identify him. It is mentioned in the compromise that after inquiry, it is found that the petitioner was not in the village. It is mentioned that now with the intervention of respectable persons, the complainant has compromised the matter. It is prayed that the FIR and all other proceedings taken thereafter be quashed in order to bring an end to the litigation between the parties. Based on the said compromise, the instant quashing petition was filed.

4. By an order dated 30.11.2017, the parties were directed to appear before the trial court so that their statement could be recorded regarding the genuineness of the compromise. The parties appeared before the Judicial Magistrate Ist Class at Dasuya wherein, a statement was made by the complainant that she has compromised the matter and has no objection, if the FIR is quashed.

5. In normal circumstances, the Court would not entertain a matter when the non compoundable offences are heinous and serious in nature. In the instant case, the offence complained of is under Section 376/511 IPC which is an offence of grave nature. This court is aware of the fact that time and again it has been held that an offence under Section 376/511 IPC is a grievous offence and considered as an offence against the society at large and thus, such matters should not be compromised. In the eyes of law, the

offence of attempt to rape is serious and non-compoundable and the Courts should not in ordinary circumstances interfere and quash the FIR that has been registered.

6. In the instant case, a reading of the FIR would show that the petitioner herein against whom allegations of attempt to rape have been levelled by the complainant, is her husband's real Maasi's son i.e. cousin brother of husband of the complainant. Contents of the compromise arrived at between the parties reveals that it has been stated by the complainant that she has given the name of the petitioner herein under pressure, because accused had covered his face with cloth and she could not identify him. Further, after inquiry, it was found that the petitioner herein was not in the village, when the alleged occurrence had taken place. This court is of the opinion that in case, the proceedings are not allowed to be compromised, complainant would be put to hardship as she would necessarily have to appear before the courts for recording of her statement and under these circumstances, continuance of criminal prosecution would be an exercise in futility, as the chances of ultimate conviction are bleak.

7. In a judgment rendered by the Hon'ble Supreme Court in ***Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466***, the Hon'ble Apex Court has laid down certain principles and guidelines which should be kept in mind while quashing of FIRs pertaining to non compoundable offence. 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.”*

8. Even in a judgment rendered by the Hon'ble Supreme Court in ***Madan Mohan Abbot vs State Of Punjab, 2008 (4) SCC 582***, it has been held that it is advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings. Relevant paragraph of the said judgment is reproduced herein below :-

“5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January 2004, passed away and

the possibility of a conviction being recorded has thus to be ruled out.

6. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.”

9. Even in the judgment rendered in ***Gian Singh vs State of Punjab & Anr, reported as 2012(10) SCC 303*** the basic principle of law as laid down is that where offences are purely private in nature and do not concern public policy, the power to quash proceedings involving non-compoundable offences on the basis of compromise can be exercised.

10. Therefore, while relying upon the ratios of the aforesaid judgments, this Court is of the view that the compromise which has been entered into for quashing of an offence under Section 376/511 IPC on the basis of the compromise should be accepted. As has been held in ***Narinder Singh & Ors.*** case (supra) those cases where a settlement is arrived at immediately after the alleged commission of the offence the High Court may be liberal in accepting the settlement to quash the criminal proceedings.

11. Consequently, keeping in view the peculiar facts and circumstances of the present case and in view of the above ratios of law, this petition is allowed and the FIR No.231 dated 20.10.2017 registered under Sections 376, 511, 451 of Indian Penal Code at Police Tanda, District Hoshiarpur and all subsequent proceedings arising out of the same are

quashed.

January 16, 2018

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
Yes/No