

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

**CRM-M-46839-2017
Date of decision: 09.03.2018**

Gurlovleen Singh Brar @ Garry Brar & another **...Petitioners**

Versus

State of Punjab and another **...Respondents**

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. A. S. Sandhu, Addl. A. G., Punjab.

Mr. Premjit S. Dhaliwal, Advocate
for respondent No. 2/complainant.

JAISHREE THAKUR, J. (Oral)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 173 dated 29.08.2017, registered under Sections 328, 376(2), 506 and 34 of the Indian Penal Code at Police Station City South Moga, District Moga and all subsequent proceedings arising therefrom in view of the compromise (Annexure P-1) entered into between the parties.

2. In brief, the facts of the case are that the aforesaid FIR came to be registered at the behest of the complainant/respondent No. 2 in which it was stated that she was the student of 12th Class. One Garry Brar (petitioner No. 1 herein) used to follow her and he established friendship with her. On 04.06.2016, petitioner No. 1 called the complainant to a hotel for celebration of her birthday where he served some cold drink to the complainant by mixing some intoxicating material in it. After drinking the same, the complainant lost her control over her body, however, she was not

fully unconscious. Petitioner No. 1 made her to sit in a car. When she regained conscious, she found herself naked and petitioner No. 1 making her movie. It was on this background that the instant FIR was got registered. However, now with the intervention of respectable persons, the dispute has been amicably settled between the parties and they have entered into a compromise. As per the terms of the marriage, it has been decided that petitioner No. 1 will solemnize marriage with the complainant.

3. By an order dated 08.12.2017, 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 CJM at Moga. In pursuance of the direction, a report has been received from CJM at Moga, stating that the compromise arrived at between the parties is without any pressure or coercion from any one and the same appears to be genuine one. It is also reported that no PO proceeding is pending against either of the parties.

4. In normal circumstances, this 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 includes an offence punishable under Section 376(2) 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(2) 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 rape is serious and non-compoundable and the Courts should not in ordinary circumstances interfere and quash the FIR that has been registered.

5. 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 noncompoundable 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.”

6. 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.”

7. 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.

8. 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(2) 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. Moreover, as per the terms of the compromise, the parties have decided to solemnize marriage with each other and it would in their interest if the present FIR is quashed.

9. 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. 173 dated 29.08.2017, registered under Sections 328, 376(2), 506 and 34 of the Indian Penal Code at Police Station City South Moga, District Moga and all subsequent proceedings arising out of the same are quashed qua the petitioners herein.

09.03.2018
Waseem Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No