

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9090 of 2015 (O&M)

Date of Decision: 01.02.2018

Rajesh Kapoor

...Petitioner

VERSUS

Central Bureau of Investigation

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Tanu Bedi, Advocate
for the petitioner.

Mr. S.S. Sandhu, Advocate
for respondent-CBI.

Mr. Ivan Singh Khosa, Advocate
for respondent no. 2.

SURINDER GUPTA, J.

A dispute over the custody of Aishley daughter of Deepak Kapoor-respondent no. 2 with his sister, namely, Seema and her husband Surinder Kumar led to registration of FIR No. 119 dated 30.11.2008 at Police Station Dasuya against petitioner on complaint of his brother Deepak Kapoor.

2. While going in the background, it is worth noting that a dispute arose between Deepak Kapoor and his sister Seema Kapoor over the custody of his daughter Aishley, who at the relevant time was living with Seema Kapoor. In order to have custody of the child Deepak Kapoor filed suit under Section 8 of the Guardian and Wards Act, in which learned Additional Civil Judge (Sr. Division), Dasuya allowed the application filed by Deepak Kapoor and his wife, for custody of their daughter and directed Seema Kapoor and her husband, namely, Surinder Kumar to produce minor

child in Court on 18.11.2006 for handing over her custody to her biological parents. Seema Kapoor filed CR No. 6449 of 2006 in this Court and vide order dated 23.12.2006, operation of the order passed by Additional Civil Judge (Sr. Division), Dasuya was stayed. On 19.11.2007, this Court directed petitioners i.e. Seema Kapoor and her husband to produce Aishley Kapoor in Court but due to non-compliance of that order, a show cause notice for contempt of Court was issued to Seema Kapoor and Surinder Kumar. A report was called from Senior Superintendent of Police, Hoshiarpur, who was asked to confirm if Seema and Aishley were residing with Mr. K. Attwal, 23, Ashford Avenue Hayer Middlesex. Vide order dated 14.07.2008, directions were issued for registration of FIR against Seema and FIR No. 86 dated 12.08.2008 was registered at Police Station Dasuya, District Hoshiarpur. Vide order dated 10.12.2008, interim order granted in favour of revision petitioners was vacated and custody of the child was ordered to be restored to jurisdiction of this Court.

3. The above background shows that the dispute regarding custody of Aishley was between Deepak Kapoor and his sister Seema and the name of petitioner nowhere cropped up in the entire episode. Deepak Kapoor lodged a complaint against his brother Rajesh Kapoor (petitioner) on 30.11.2008 at Police Station Dasuya, which led to registration of FIR No. 119 dated 30.11.2008 at Police Station Dasuya District Hoshiarpur. The complaint reads as follows:-

“.....I am resident of above mentioned address and employed as Sub Inspector in the CISF at New Delhi. I have two children. Elder is daughter Aishely Kapoor and younger is son Karan Kapoor aged about 7 years. Daughter Aishley

Kapoor was born on 14.08.1999 in Basra Hospital, Dasuya. Birth certificate received from Basra Hospital is lying with me. At present I was posted in U.P. and my wife Jyoti Kapoor was residing with my parents at Dasuya. When my daughter Aishley Kapoor was 1½ years old, I had gone to Dasuya to bring my wife and my daughter. At the instance of my mother, I left my daughter Aishley to remain with them and taking my wife alone, I came to U.P. When death of my mother took place on 28.12.2001, I went to my house. When I was about to take my daughter alongwith me, my sister Seema Kapoor and brother Rajesh Kapoor said, “brother, let the baby remain with us.” Rajesh Kapoor said, “you may take her after my marriage.” At the instance of my family members, I left my daughter to remain with them so that they could remain happy. Thereafter, my brother Rajesh Kapoor without informing us went to England and similarly my sister Seema Kapoor without informing us, performed love marriage with Surinder Kumar s/o Diwan Chand r/o Ward No. 5, Kasba Mohalla, Dasuya. I went to bring my daughter several times, but my sister Seema Kapoor and brother Rajesh Kapoor kept on blackmailing me. Thereafter, my sister Seema Kapoor and brother Rajesh Kapoor and Surinder Kumar in collusion with each other got two fake certificates of different dates of my daughter Aishley Kapoor prepared from the Municipal Committee Office, prepared photocopies whereof are possessed by me. The aforesaid three persons, having colluded also got and

prepared other fake documents of my daughter and got her false passport issued and took her alongwith them to England without our consent. Whereas we are her real parents. The aforesaid three persons by committing forgery, have got bogus passport of Aishley prepared. Necessary action may please be taken against them.....”

4. After registration of FIR, Rajesh Kapoor and Seema Kapoor appeared before the Court and were taken into custody in U.K. (United Kingdom). On 05.12.2008, Rajesh Kapoor was released but Seema Kapoor remained in custody till 19.12.2008 as she was found overstaying after expiry of her Visa for United Kingdom (later referred to as U.K.). The matter regarding custody of Aishley was raised before U.K. Courts, where petitioner and Seema were again arrested and released on bail vide order dated 02.06.2009. Metropolitan Police, U.K. observed that no further action against petitioner was required and charges of abduction of Aishley Kapoor against him were dropped vide order (Annexure P-18). Vide order dated 17.12.2009, this Court handed over investigation of both the FIRs to CBI, which registered two separate FIRs and after investigation presented final report before the Court.

5. It requires to be noted here that CBI in two separate FIRs, in which investigation was entrusted to it, presented a joint challan (Annexure P-2). In first FIR RC No. 9(S) 2009/SCB/CHG dated 29.12.2009 registered by the CBI, petitioner-Rajesh Kapoor was not named and no allegation was levelled against him. Second FIR RC No. 10(S)/SCB-CHG dated 29.12.2009 was registered on the statement of respondent no. 2-Deepak Kapoor (complainant). As per allegations in second FIR, respondent no. 2-

Deepak Kapoor had left his daughter in his house at Dasuya, firstly on asking of his mother and then on asking of his sister-Seema Kapoor and brother-Rajesh Kapoor. Thereafter, petitioner-Rajesh Kapoor left for England and his sister-Seema Kapoor performed love marriage with Surinder Kumar. Respondent no. 2-Deepak Kapoor tried to bring his daughter back but his sister Seema Kapoor and brother Rajesh Kapoor kept on blackmailing him. Allegations against the petitioner is that he in connivance with his sister-Seema Kapoor got two fake certificates of different dates of Aishley Kapoor, daughter of respondent no. 2-Deepak Kapoor, prepared from Municipal Committee office and on the basis of these documents got her false passport issued and took her to England. Allegations of fabricating document for Aishley by petitioner were not proved during investigation by CBI, as is clear from the final report submitted by CBI, wherein allegations regarding fabrication of documents relating to date of birth and parentage of Aishley were levelled against accused Seema Kapoor and Surinder Kumar, which are as follows:-

- (i) Investigation has also established that Seema Kapoor (A-1) in connivance with Surinder Kumar (A-2) had got entered fake date of birth of Aishley in the records of Municipal Council, Dasuya and got prepared false birth certificate of Aishley Kapoor showing her date of birth as 15.09.2000 and 15.12.2000 by substituting the names of parents as Surinder Kumar and Seema Kapoor.
- (ii) Investigation further established that Surinder Kumar (A-2) had submitted an application on 24.12.2003 to Executive Officer, Municipal Council, Dasuya typed in

Gurumukhi requesting for entering the birth of his daughter Aishley in the records as 15.09.2000. He has mentioned in the application that the birth of Aishley has not been entered in any Govt./Semi Govt. Office. This application contains forged signatures of Rajni Sharma, Municipal Councilor, Dasuya. Accused Seema Kapoor and Surinder Kumar also got prepared two affidavits sworn in good faith by Parvinder Kumar, President Municipal Council, Dasuya and purportedly sworn by Rajni Sharma, Councilor, Municipal Council, Dasuya wherein both of them have mentioned that they knew the family of Sh. Surinder Kumar r/o Ward no. 3, Dasuya personally and Ms. Aishali Gamgotra is real daughter of Surinder Kumar and Seema Gamgotra born on 15.09.2000 at Dasuya and the entry of birth of Aishli Gamgotra could not be made in the records at the time of her birth. The affidavit of Rajni Sharma has been verified by Sh. Parvinder Kumar whereas affidavit of Parvinder Kumar has been purportedly verified by Smt. Rajni Sharma and both the affidavits have been attested by Executive Magistrate, Dasuya. In his affidavit, Surinder Kumar has been identified by Parvinder Kumar in which he has given the date of birth of Aishley as 15.09.2000. The application of Surinder Kumar (A-2) alongwith above affidavits was sent to SDM, Dasuya from Municipal Council Office, Dasuya as per procedure

for obtaining order of SDM for making late entry of Aishley as on 15.09.2000. These papers (were) processed by Krishana Kumari (A-4), Clerk of Municipal Council, Dasuya.

- (iii) Investigation has also established that on 27.01.2004, Naib Tehsildar Dasuya recorded statements of Surinder Kumar (A-1) who have stated that Aishley was born on 15.09.2000, Naib Tehsildar, Dasuya sent a report vide no. 119/MC dated 27.01.2000 to SDM, Dasuya. On the basis of the aforesaid records, SDM, Dasuya vide order no. 123-25/BIG dated 10.02.2004 ordered for making necessary entry about the birth of Aishli Gamgotra d/o Surinder Kumar in the records as on 15.09.2000. The S.D.M., Dasuya has directed to enter the date of birth in the name of Asihalee Gamgotra, whereas in the records of Municipal Council, Dasuya, the name has been entered as Aishley only by Smt. Krishana Kumari.
- (iv) Investigation further established that the original record regarding issuance of Passport to Seema Kapoor and Aishley Kapoor has been weeded out by the Passport Office, Jalandhar as per circular of Ministry of External Affairs, Govt. of India. However, the scanned files relating to the said passports were collected from Passport Officer, Jalandhar which revealed that vide passport application file of Aishley d/o Surinder Kumar and Seema Kapoor, Passport No. G-2339146 was issued

to her on 05.04.2007 valid upto 04.04.2012. Smt.Seema Kapoor had filed a fake birth certificate of Aishley issued by Municipal Council, Dasuya showing her date of birth as 15.09.2000.

(v) During investigation, Parvinder Kumar, Ex-President, Municipal Council, Dasuya has admitted that he has signed the affidavits/certificate regarding date of birth and parentage of Aishley in good faith put before him by Seema Kapoor (A-1) and Surinder Kumar (A-2). He had no malafide intention and he is not beneficiary in any manner. Similarly, Smt. Rajni Sharma stated that she has never sworn an affidavit regarding date of birth of Ms. Aishley Gamgotra as 15.09.2000 born to Smt. Seema Kapoor and Surinder Kapoor. Her signatures have been forged by someone. The document expert has also proved that questioned signatures of Smt. Rajni Sharma do not match with her specimen admitted signatures.

(vi) During investigation original certificate of date of birth of Aishley showing as 15.09.2000 used by Seema Kapoor (A-1) and Surinder Kumar (A-2) for preparation of her passport could not be seized as the same has been weeded out by Passport Office, Jalandhar but the scanned copy is there. However, fake original record prepared by A-1 and A-2 regarding registration of date of birth of Aishley as 15.09.2009 in Municipal Council,

Dasuya have been seized.

- (vii) Investigation has established that Deepak Kapoor and Jyoti Kapoor are the real parents of Ms. Aishley Kapoor, who was born on 14.08.1999 at Basra Nursing Home, Dasuya. Surinder Kumar (A-2) and Seema Kapoor (A-1) got prepared fake birth certificates of Aishley Kapoor showing her date of birth as 15.09.2000 and 15.12.2000 and substituted their own name as parents of Aishley Kapoor. The marriage of Surinder Kumar and Seema Kapoor was solemnized in April, 2003 whereas Aishley Kapoor was born much earlier i.e. On 14.08.1999. On the basis of fake birth certificate passport no. G-2331946 was got issued on 05.07.2007 in favour of Aishley Kapoor. Seema Kapoor has misused the process of Hon'ble High Court and taken Aishley Kapoor minor daughter of Deepak Kapoor from the jurisdiction of Hon'ble High Court by taking undue advantage of the order dated 23.12.2006. Evidence has also come on record through the testimony of Deepak Kapoor, Jyoti Kapoor, Rajni Kohli and Veenu Nanda, sisters of Deepak and Seema Kapoor that Aishley Kapoor was never given in adoption by the actual parents and no adoption deed was ever executed.

6. The above investigation shows that it was Seema Kapoor and Surinder Kumar, who got prepared birth certificate of Aishley Kapoor and got incorporated their names in place of her parents. In the entire

investigation nothing came out that petitioner-Rajesh Kapoor was a party to fabrication of any of above documents. Even this fact was found that the passport of Aishley Kapoor was also got issued by Seema Kapoor and Surinder Kapoor. Allegations against petitioner-Rajesh Kapoor in the final report are as follows:-

- (i) During investigation it is established that Rajesh Kapoor (A-3) facilitated Seema Kapoor (A-1) and Surinder Kumar (A-2) in procuring passport of Aishley Kapoor on the basis of her fake birth certificate and he has filled the passport application form of Aishley Kapoor knowing fully well that Aishley Kapoor was the daughter of his brother Deepak Kapoor and Jyoti Kapoor and she was born on 14.08.1999 whereas in the passport form of Aishley Kapoor has been shown born on 15.09.2000 and the names of parents have been shown as Seema Kapoor and Surinder Kapoor.
- (ii) Investigation has further established that Seema Kapoor (A-1), Surinder Kumar (A-2) and Rajesh Kapoor (A-3) conspired and got prepared a passport of Aishley from Passport Office, Jalandhar on the basis of fake birth certificate showing her date of birth as 15.09.2000 and parentage as Surinder Kumar and Seema Kapoor and finally took her away without the consent of her parents (Deepak Kapoor and Jyoti Kapoor) to London on 22.12.2007 by misusing order dated 23.12.2006 of the Hon'ble High Court of Punjab and Haryana, Chandigarh.

The departure card of Seema Kapoor (A-1) and Ms. Aishley Kapoor is on record showing their departure from Amritsar Airport to London on 22.12.2006 by flight no. HY-448.

- (iii) Rajesh Kapoor (A-3) had filled up passport application form of Aishley showing her date of birth as 15.09.2000 and her parents as Seema Kapoor and Surinder Kumar, whereas he was fully aware that Ms. Aishley was the daughter of his brother Deepak Kapoor born on 14.08.1999.

7. It is not disputed that petitioner is living in England and has not joined investigation. CBI took his specimen signatures from school record and produced evidence during trial in which Surinder Kumar was convicted but failed to prove that passport form of Aishley Kapoor was filled in by petitioner-Rajesh Kapoor. Investigation by CBI has revealed that original record regarding issuance of passport to Seema Kapoor and Aishley Kapoor has been weeded out by the Passport Office, Jalandhar.

8. There is another aspect of this case, which attracts attention of this Court. Complainant-Deepak Kapoor and petitioner-Rajesh Kapoor have amicably resolved the dispute which led to registration of FIR by Deepak Kapoor against petitioner. On perusal of reply on affidavit filed by Deepak Kapoor-complainant, it is evident that he (brother of petitioner) has settled the dispute with petitioner. Firstly, he (Deepak Kapoor) moved application for his impleadment in this petition, narrating the factum of compromise, wherein he has stated that due to deep love and affection and the fact that petitioner was not seriously involved in the plan of co-accused, namely,

Seema Kapoor (sister of complainant-respondent no. 2 and petitioner) in removing his biological daughter, namely, Aishley Kapoor from India and with the intervention of friends and relatives, he has settled the dispute with petitioner-Rajesh Kapoor. Though, he has levelled allegations in the second FIR that petitioner had facilitated Seema Kapoor and Aishley Kapoor to leave the country and come to England, yet on enquiry, he came to know that petitioner was having limited work visa at that time and was not in a position to arrange sponsorship for Seema Kapoor and Aishley Kapoor. He had also disclosed this fact in his statement to CBI and apprised the investigating agency that petitioner-Rajesh Kapoor had left India in January, 2007 after birth of his first child and was not seen in India thereafter. Some of relatives had told him that petitioner-Rajesh Kapoor had come to India for few days in October, 2007, but on verification from the passport of petitioner and after having telephonic conversation with him, came to know that petitioner was not in India from January to October, 2007, as such, could not play any role in filling up the passport application form of Aishley in April, 2007. While explaining the reasons for his naming petitioner-Rajesh Kapoor as a facilitator for Seema Kapoor and his daughter Aishley Kapoor, complainant-respondent no. 2 has clarified in his reply that he grew suspicious against the petitioner when in the last week of November, 2008 his sister Seema Kapoor and daughter-Aishley Kapoor were found at the house of petitioner-Rajesh Kapoor. Before this complainant-respondent no. 2 never suspected the involvement of his brother (petitioner) or filed any complaint against him. He was not a party in the dispute between complainant and his sister-Seema Kapoor. Complainant-respondent no. 2 felt annoyed and stopped talking to petitioner after his sister and daughter

were found at his house. During last year, when health of petitioner-Rajesh Kapoor deteriorated, he spoke to him and communication between both clarified all the misgivings/misconceptions and these facts got clarified that Seema Kapoor had not stayed at the house of petitioner-Rajesh Kapoor during entire period of her stay in United Kingdom (U.K.). Even U.K. police had given clean chit to petitioner-Rajesh Kapoor. It was on the information given by some relative he now suspect that family of Mr. Atwal, husband of sister of petitioner, had probably arranged sponsorship for Seema Kapoor and Aishley Kapoor and facilitated their going to U.K. The enquiry by complainant revealed that petitioner-Rajesh Kapoor had no personal or any other knowledge about whereabouts of Seema Kapoor and Aishley Kapoor. CBI has filed challan against the petitioner terming him as accomplice in abduction of his daughter. Complainant does not want to press his allegations against the petitioner. Though CBI has levelled allegation against petitioner that application form for passport of Aishley Kapoor was filled in by him but it did not find any evidence of forging and fabricating any other document, relied upon by Seema Kapoor to obtain passport of Aishley Kapoor. Complainant-respondent no. 2 has stated in reply on affidavit that in the background of these facts, identification of the handwriting of petitioner Rajesh Kapoor by him in the scanned copy of passport application form, filled up in the capital letters in the square blocks meant for the same, is a *bona fide* mistake on the part of the deponent. There is normally some similarity in the handwriting of family members and the application form could have been filled up by Seema Kapoor herself, who had also procured the forged ration card, birth certificate, verification report etc. alongwith her husband Surinder Kumar. The deponent has seen the

documents attached with the petition and the same show the inability of even a forensic expert to give any opinion conclusively on the matching of handwriting of passport application with specimen writing of petitioner.

9. While requesting this Court to quash proceedings against the petitioner, complainant-respondent no.2 has stated in para 5 of the reply as follows:-

“5. That the deponent's family has suffered a lot on account of this unfortunate litigation between the siblings resulting in deprivation of love and affection to and from his own daughter in the life of deponent. The deponent once again requests the Hon'ble Court for the sake of peace, love and care in the family to permit him to compromise the matter with his real brother who is not in good health and has to take care of three children alongwith his ailing wife. In view of the stand of the deponent not to press allegations against his brother, forcing the petitioner to come to face the trial as an empty formality would cause a lot of hardship to the two families i.e. the petitioner's as well as the deponent's. Once again for the long lasting peace amongst the other siblings in the family, who have already lost both the parents and one sibling who has gone missing alongwith the deponent's child, the deponent requests the Hon'ble Court to quash the criminal proceedings against the petitioner.”

10. Learned counsel for the petitioner has argued that this case is

an example of an unfortunate litigation, which has not only adversely affected the relations of petitioner with complainant-respondent no. 2 but both the families have also suffered. It is an unfortunate case where complainant initially left his daughter with his sister and when she developed attachment with her, he sought her custody back which sister of complainant, namely, Seema Kapoor could not bear and took the extreme step of taking Aishley daughter of complainant-respondent no. 2 to England and now whereabouts of Seema Kapoor and Aishley Kapoor are not known to the police and even to complainant. After reaching England, Seema Kapoor and Aishley Kapoor had gone to the house of petitioner. There is no allegation that petitioner had in any manner sponsored their visit to England as he was not in a position to do so at the relevant time. If Seema Kapoor and Aishley Kapoor had gone to the house of petitioner, it does not make out the offence of his connivance with Seema Kapoor. Till Seema Kapoor left India and FIR was registered against her under the order of this Court, not even a whisper of connivance of petitioner in the matter was there. The report of U.K. Police that Seema Kapoor and Aishley Kapoor were found at the house of petitioner in England fueled suspicion of complainant-respondent no. 2, who was perturbed as his daughter had been taken away from his custody against his wishes and he, in such moments of annoyance, anger, agony and desperation, named petitioner as conspirator and lodged FIR against him. In order to term the petitioner as facilitator in taking away Seema Kapoor and Aishley Kapoor from India, CBI without any cogent, convincing and corroborating evidence has levelled allegation that passport application form of Aishley was filled in by the petitioner. However, this fact could not be proved as the Government Forensic Expert, who appeared

as PW-9 during trial, has stated that scanned documents could not be examined for comparison of handwriting. The investigating agency i.e. CBI had also commented in support of the report of forensic expert, endorsing opinion of forensic expert, copy of which has been placed on file as Annexure P-37. CBI tried to prove handwriting of petitioner by leading evidence during trial but failed. If this part of evidence is excluded, there is no evidence on record to show that petitioner was in India when passport form of Aishley was submitted before the Passport Authorities or he had filled in that passport form. Even complainant-respondent no. 2 in his reply has stated that he was under some misconception regarding handwriting of petitioner in the passport form.

11. The other aspect of the case is that the dispute revolves around custody of Aishley Kapoor, daughter of complainant-respondent no. 2, which is admittedly with Seema Kapoor. Complainant-respondent no. 2 has settled the dispute with petitioner and has filed reply on affidavit to this effect. He has categorically stated in reply that allegations were levelled against the petitioner under a wrong feedback given by his relatives. He has sought quashing of FIR against the petitioner as all the disputes have been settled with him. In view of settlement between petitioner and complainant-respondent no. 2, there is no purpose of keeping this litigation alive. Long drawn family dispute resolved amicably by the parties, will give an opportunity to them to lead remaining part of their life in a cordial, amicable and peaceful manner.

12. Learned counsel for complainant-respondent no. 2 has argued that the family dispute between complainant and petitioner has since been resolved and he endorses submissions of learned counsel for petitioner and

requests that instant FIR registered against the petitioner may be quashed.

13. Learned counsel representing CBI has vehemently opposed the submissions of learned counsel for the petitioner and learned counsel for complainant-respondent no. 2 seeking quashing of the FIR. He has argued that complainant-respondent no. 2 while appearing as PW-1 before the trial Court has stated that application form for issuance of passport of Aishley was filled in by petitioner-Rajesh Kapoor and he has identified his handwriting. Amrik Singh (PW-18) had given the sample handwriting of Rajesh Kapoor. Though, forensic expert has opined that no report on the basis of scanned copy of application produced in this case could be given, still facts and circumstances of the case show that petitioner was a conspirator with Seema Kapoor in taking away Aishley Kapoor, daughter of complainant-respondent no.2 from this country. Seema Kapoor and Aishley Kapoor were found living at the house of petitioner-Rajesh Kapoor in England. Though, complainant has now reconciled and compromised the matter with petitioner but FIR cannot be allowed to be quashed as earlier the request was made to U.K. Courts for extradition of Rajesh Kapoor in this case.

14. On giving a careful thought to respective submissions of learned counsel for petitioner, learned counsel for complainant-respondent no. 2 and learned counsel appearing for CBI, I find that it is a very hard case where complainant, who was aggrieved and annoyed as he could not get custody of his daughter from his sister, filed a petition against her and made all out efforts to get custody of his daughter back but failed as his daughter was taken to U.K. by his sister. The dispute started between complainant and his sister in the year 2006 and vide order dated 03.11.2006, Seema

Kapoor was directed to produce the child in Court. She filed revision in this Court and obtained *ex parte* interim stay vide order dated 23.12.2006. Thereafter, she did not produce the child in this Court despite directions and ultimately left for U.K. with child on 22.12.2007. This Court vide order dated 14.07.2008 directed registration of FIR against Seema Kapoor and her husband Surinder Kumar and Dasuya police registered FIR No. 86 dated 12.08.2008. Till filing of the petition seeking custody of the child and registration of FIR under orders of this Court, there was no whisper about involvement of petitioner in the dispute between complainant-respondent no. 2 and his sister-Seema Kapoor. The matter got flared up when Seema Kapoor was located by U.K. police alongwith Aishley Kapoor at the house of petitioner-Rajesh Kapoor. Another FIR bearing no. 119 dated 30.11.2008 was registered at Police Station Dasuya on the complaint of complainant-respondent no. 2 (Deepak Kapoor).

15. Deepak Kapoor was aggrieved as his daughter, Aishley Kapoor, had been taken away by his sister. Report that Seema Kapoor and Aishley Kapoor, daughter of complainant-respondent no. 2, had been found at the house of petitioner-Rajesh Kapoor in England, appears to have fueled the matter leading to levelling of allegations against the petitioner as well. It is not disputed that during investigation no tangible evidence could be found to this effect that petitioner-Rajesh Kapoor had facilitated travel of daughter of complainant-respondent no. 2 from India to England or had sponsored her visit alongwith Seema Kapoor to England. It appears that he was not in a position to sponsor visit of Seema Kapoor and Aishley Kapoor to England. The only allegation on which CBI has based its case against the petitioner is that he facilitated taking out of Seema Kapoor from this country

by filling up passport form of Aishley Kapoor. However, this plea could not be substantiated by any report of handwriting expert or visit and stay of petitioner in India, when the application form was filled up. Attempt was made to obtain report of handwriting expert, who gave opinion that line quality of strokes in the writing in scanned copy could not be studied and no final report about handwriting could be given. In report, copy of which has been placed on file as Annexure P-37, it was commented by the investigating agency about report of handwriting expert as follows:-

- “3. During investigation itself, the scanned copies of Passport Application files of Aishley Kapoor and Rajesh Kapoor were sent to Government Examiner of Questioned Documents, Directorate of Forensic Science, Ministry of Home Affairs, Govt. of India, Shimla alongwith the admitted hand writing of Rajesh Kapoor for seeking expert opinion with regard to his hand writing on the said documents. The scanned copies of Passport Application files of Aishley Kapoor and Rajesh Kapoor were marked as Q-35 to Q-50 and Q-83 to Q-92 respectively. The admitted hand writing of Rajesh Kapoor were marked as A-1 to A-6. The letter no. 988 dated 26.03.2010 of CBI, SCB, Chandigarh addressed to Government Examiner of Questioned Documents, Shimla is enclosed as Annexure-A.*
- 4. With regard to the above queries i.e. Q-35 to Q-50 and Q-83 to Q-92, the Government Examiner of Questioned Documents, Directorate of Forensic Science, Ministry*

of Home Affairs, Govt. of India, Shimla vide its report no. CX-67, 68/10-177 dated 21.05.2010 Annexure-B has opined as below:-

“Further it is observed that the documents marked Q35 to Q92 are reproduction copies probably prepared through process of scanning. The line quality of the strokes occurring in the writings in the aforesaid documents could not be studied.”

5. *CBI had sought the opinion of Government Examiner of Questioned Documents, Shimla on the collected scanned copies of the above documents, but the expert denied to give the opinion as the line quality of the strokes in the writings could not be studied. Whereas, Dr. Jassy Anand, Forensic Expert, Chandigarh has given a definite opinion on the basis of photocopies of the said collected scanned documents which were supplied to the accused persons by CBI. The Government Examiner, who has given his opinion is an unbiased, uninterested/neutral party as far as this case is concerned and on the other hand Dr. Jassy Anand is a Private Practitioner, who gives opinion by charging money and the chances of giving a correct/unbiased opinion diminishes upto a great extent. The Government Examiner by declining to give opinion has exercised the precise degree of caution which is required to be*

exercised by a true professional. Hence, the decision taken by Government Examiner is more trust worthy.”

16. It is not disputed that before the trial Court prosecution could not prove that passport form is proved to have been filled up by the petitioner. It is nowhere the case of prosecution that petitioner was party to forging of any document regarding date of birth and parentage of Aishley Kapoor, which were made part of application for issuance of her passport. The contention that passport form was filled in by the petitioner appears to be a mere suspicion in the absence of any convincing and cogent evidence in this regard. The complainant has now come up with a categorical plea that he has stated to CBI that petitioner-Rajesh Kapoor has left the country in January, 2007 and was not in India from January to October, 2007. He had not seen petitioner in India after January, 2007. He suspected the involvement of petitioner only for the reason that his sister Seema Kapoor and daughter-Aishley Kapoor were found at his house in England. He had made enquiries and is now satisfied that petitioner was nowhere involved in entire matter and seeks quashing of the FIR.

17. So far as contention of learned counsel for CBI that complainant-respondent no. 1 had supported the prosecution case during trial, nowhere makes out that he cannot settle the family dispute with petitioner at any later stage. The case relates to custody of daughter of complainant and his entire grievance was initially against his sister-Seema Kapoor. Though, CBI in order to get extradition of petitioner had moved to U.K. Courts but this fact in itself does not bar two brothers to settle their dispute, misconception, misgivings and misunderstanding. Now complainant is satisfied that petitioner had no role either in filling up

passport application form of Aishley Kapoor or in facilitating her elopement from the country with Seema Kapoor. Complainant on enquiry has now come to know that travel of his sister with Aishley Kapoor was perhaps facilitated by his other sister and her husband and not by the petitioner.

18. Keeping in view above facts, I find no reason to keep the prosecution of petitioner pending. While explaining the scope of powers vested in this Court under Section 482 Cr.P.C., Full Bench of this Court in case of **Kulwinder Singh vs. State of Punjab**, 2007 (3) RCR (Crl.) 1052, has observed as follows:-

- “25. The power under Section 482 of the Cr.P.C. cannot be a hostage to one class or category of cases. That would be a complete mis construction of the intent of the Legislature, who placed its utmost faith in the inherent power of the High Court to break free the shackle of other provisions of the Code. to give effect to any order under it or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice.
26. The wide amplitude of this provision of law cannot be diminished by any myopic interpretation and any straightjacket prescription.
27. Shri R.S. Cheema, learned Senior Advocate, who assisted the Bench as Amicus Curiae, highlighted the inadequacies of the criminal justice system in order to propound and promote the principle that under Section 482 of the Cr.P.C., the High Court can effectively exercise its power in an appropriate case and intervene to quash an F.I.R. even when the case discloses a non-compoundable offence and where the parties have voluntarily entered into a compromise. To illustrate, he submitted that the Legislature, in its wisdom, is seeking to introduce a pre-bargaining in the country and in this scenario, to curtail the power under Section 482 by

reading into the provisions of law the non-existing lines would , indeed, be a travesty of justice, especially in view of the fact that there is a wide spread tendency in the society now to use the arm of criminal law to settle civil disputes.....

28. *To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".*
29. *In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and Ors. , Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:-*
“The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.”
30. *The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.*
31. *No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.*
32. *The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it*

truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

- 33. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.*
- 34. The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a*

compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.”

19. In view of facts and circumstances of this case, as discussed above and observations of Full Bench of this Court in ***Kulwinder Singh (supra)***, I am of the considered opinion that it is a fit case in which the impugned FIR should be quashed. Keeping the case pending will not serve the ends of justice. The quashing of the FIR will provide the parties to this petition an opportunity to live in an amicable, peaceful and harmonious atmosphere which is not only in the interest of the parties but also for their families and ultimately the society at large.

20. Keeping in view above facts and the reply of complainant, this petition is accepted and FIR No. RC-10(S)/SCB/CHG dated 29.12.2009 arising out of FIR No. 119 dated 30.11.2008, registered at Police Station Dasuya, District Hoshiarpur, against the petitioner and challan filed against him by CBI is ordered to be quashed with all other consequential proceedings.

21. The above order will also result in quashing of allegations levelled against the petitioner in common final report filed by CBI before the Court in FIR Nos. RC-9(S)/2009/SCB/CHG and RC-10(S)/2009/SCB/CHG dated 29.12.2009.

February 01, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No