

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

Crl. Misc. M 5205 of 2018 (O&M)

Date of decision: 14.5.2018

Anand Mishra

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mrs. Anju Arora, Additional Advocate General, Punjab.

Mr. L.S. Mann, Advocate,
for respondents No.2 and 3.

JAISHREE THAKUR, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of FIR No. 70 dated 9.5.2015 (Annexure P/1) registered under Sections 363, 366-A IPC (Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act added later on) at Police Station Daba, District Ludhiana, and all subsequent proceedings arising therefrom.

2. In brief, the facts are that the aforesaid FIR came to be registered by the complainant—Shiv Nayak, stating that he has two children, one of whom, the prosecutrix, was pursuing her studies in PMT Coaching from Akash Coaching Centre situated near P.U., Ludhiana. On 28.4.2015 at about 7.30 a.m., she went to her coaching institute, but did not return thereafter. He searched for her at his own level and came to know that

Anand Mishra, the petitioner herein, who is student of RGCSM Computer Centre had taken her away on the pretext of marrying her. On the statement so made, the matter was investigated and the petitioner herein was arrested near Apollo Hospital, Ludhiana and the victim was recovered from him on 11.5.2015. On 12.5.2015, both the petitioner and the prosecutrix were medically examined and the petitioner herein was arrested. Thereafter, challan was presented under Sections 376, 363 and 366-A IPC and Section 6 of the Protection of Children from Sexual Offences Act.

3. Learned counsel for the petitioner submits that the matter has been compromised between the complainant and the petitioner herein, as no incident, as alleged, had ever taken place. In fact, the compromise has been entered into between the parties in which it has clearly been stated by the complainant and his daughter that they have no objection in case the FIR is quashed. The parties have also got their statements recorded before the Additional Sessions Judge, Ludhiana, affirming the contents of the compromise arrived at between the parties. It is further argued that initially the FIR was registered under Sections 363 and 366-A IPC only and Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act were added later on under the pressure of the parents, as such, no offence under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act are made out.

4. Appearance has been caused on behalf of the complainant and the prosecutrix, who both are present in Court and submits that they have no objection in case the FIR is quashed. It is further submitted that the prosecutrix, in the meantime, has married and she is settled in her

matrimonial home. It is submitted that in case proceedings and the FIR are not quashed, it would cause disturbance in her matrimonial life.

5. In the instant case, on a reading of the contents of the FIR at the first instance, no offence under Section 376 IPC is made out nor does the statement recorded under Section 161 of the Code of Criminal Procedure. No doubt, Section 376 IPC has been added after medical was conducted making the offence heinous and serious in nature. The offence under Section 376 IPC is a non-compoundable and considered as an offence against the society at large and can not be quashed easily.

6. Learned counsel for the petitioner urges that the prosecutrix left voluntarily in the company of the petitioner as would be evident that she remained with him for almost two weeks and it is only when they were apprehended and under pressure of her parents a statement alleging the offence of rape was made out. It is argued that the prosecutrix is almost 17 years of age FIR would result in undue hardship to the petitioner herein, who is a student himself. It is also argued that there are remote chances of conviction since the matter already stands settled between the parties where it has been recorded that the FIR was got recorded under a misapprehension. Reliance is placed on the judgment rendered by the Hon'ble Apex Court in ***Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466***, to quash the FIR, in view of the principles and guidelines laid down by the Hon'ble Apex Court pertaining to non-compoundable offences. 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.”*

7. However, the Hon'ble Apex Court in **State of Madhya Pradesh Versus Madan Lal (2015) 7 Supreme Court Cases 681**, while dealing with the situation like in the present case observed as under:-

*“Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable. In this context, it is profitable to reproduce a passage from **Shimbu and Another v. State of Haryana (2014) 13 SCC 318**, wherein, a three-Judge Bench has ruled thus:-*

“Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be

assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC.”

xx xx xx

We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of

spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility.”

8. Even though both the petitioner and the complainant have pressed for the quashing of the FIR on the basis that continuance of the same will cause undue harassment to the prosecutrix who is happily married elsewhere and there are chance of putting her matrimonial life in jeopardy, this court is unable to quash the FIR, in view of the law as settled in **Madan Lal's case (supra)**.

9. The present petition deserves to be dismissed. Ordered accordingly.

14.5.2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No