

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

Crl. Misc. M- 6150 of 2018 (O&M)
Date of Decision: 16.10.2018

Parishek Gupta

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Harsh Manocha, Advocate
for the petitioner.

Mr. R.S. Khera, AAG, 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. 21 dated 1.12.2014 (Annexure P/1) registered under Sections 406, 498-A IPC at NRI PS, District SBS Nagar, and all subsequent proceedings arising therefrom, including the order dated 3.11.2015, vide which the petitioner was declared as proclaimed offender.

2. In brief, the facts are that a marriage between the petitioner and respondent No.2 was solemnized on 19.11.2013, as per Hindu rites and ceremonies at Rupnagar and they lived together as husband and wife upto 10.4.2014. No child was born out of this wedlock. Thereafter, some

disputes arose between the parties, which led to the registration of the

aforesaid FIR on the complaint filed by respondent No.2. It is averred that after marriage the petitioner went to Canada on 11.4.2014 and has not returned to India till date. However, because of non-appearance of the petitioner in the proceedings under the FIR, the petitioner was declared as proclaimed offender. In the meantime, the parents of the petitioner filed Criminal Misc. M 37603 of 2015 for quashing of the FIR, in which talks for compromise were initiated and ultimately, the petitioner and respondent No.2 entered into a compromise on 5.11.2015 (Annexure P/4), in which it was settled that an amount of ₹8,00,000/- (₹8 lakhs) would be paid to the complainant as full and final settlement towards past, present and future permanent alimony and maintenance. Apart from that, it was agreed that both the parties would file a petition under Section 13-B of the Hindu Marriage Act for divorce by mutual consent. Pursuant to the said compromise, a petition under Section 13-B of the Hindu Marriage Act for grant of divorce by mutual consent was filed, which stands allowed on 12.5.2016.

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 FIR. It is argued that as per terms of the compromise, respondent No.2/complainant had specifically stated that she will have no objection, if the FIR is quashed, but now she is not appearing in this Court despite service.

4. Learned counsel for the petitioners relies on the judgments

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 7.5.2018. As per the office report, respondent No.2 served was served, but she did not put in appearance and the matter adjourned for 9.8.2018 and thereafter for 16.10.2018. Even today none has put in appearance on behalf of respondent No.2. 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 has arrived at between the parties on 22.2.2018 (Annexure P/4). In terms of the compromise, the petitioner herein has made the full payment of ₹8,00,000/- to the respondent-wife as full and final settlement for the past, present and future maintenance. As per the terms of the compromise, respondent No.2/complainant had specifically stated that she will have no objection, if the FIR is quashed.

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 have no objection if the FIR is 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 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 to the same. Consequently, this petition is allowed.

FIR No. 21 dated 1.12.2014 (Annexure P/1) registered under Sections 406, 498-A IPC at NRI PS, District SBS Nagar, and all subsequent proceedings arising therefrom, including the order dated 3.11.2015, vide which the petitioner was declared as proclaimed offender, are hereby quashed.

16.10.2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No