

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

CRM-M No.10741 of 2019
Date of decision: 10th April, 2019

Usman Arif

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Talim Hussain, Advocate for the petitioner.
Mr. Suhail Khan, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

A case by way of FIR No.85 dated 29.11.2018 under Sections 376(2)(N), 323, 313, 506 IPC was got registered at Police Station WPS (West), Gurugram on the complaint of complainant, an unmarried employed girl aged around 27 years. The precise allegations were that the victim who was working in an industry in the year 2014 i.e. about four years prior to the registration of the present case, came in contact with the accused and both of them used to meet each other quite often. It is subsequent thereto, the petitioner moved and started living at the house of one Tony, close to the complainant and during the course of time on the promise of marrying her by the petitioner, they carried on their acts of physical intimacy leading to the complainant becoming pregnant out of the loins of the petitioner. It is further alleged by the complainant that the accused petitioner started blackmailing her on the

basis of her intimate photos and threatened the complainant to get her pregnancy aborted and even forced her to enter into a relationship with the friends of petitioner, as a consequence of which the complainant developed depression and remained under treatment. The complainant claims that the petitioner has also threatened to throw acid on the complainant and her sisters, and thereafter, the present case was got registered when the victim realized that her life was destroyed by the deceitful act and conduct of the petitioner.

The accused petitioner has moved this Court under Section 482 Cr.P.C. seeking quashment of the same on the basis of compromise/ settlement deed (Annexure P2) on the grounds that the parties have effected settlement and therefore the FIR needs to be quashed. A Coordinate Bench vide order dated 08.03.2019 at the very onset of the petition, keeping in view the offences for which the petitioner has been hauled up, has listed the matter to address on the question of its maintainability.

Upon hearing learned counsel for the petitioner and perusal of the records. The prima facie allegations that have come about from the victim and forms FIR (Annexure P1) show that it was on the pretext of getting married, the accused petitioner had defiled the victim and even forced her to get her pregnancy aborted and it is under threat and blackmailing, this entire scheme have come about.

Learned counsel for the petitioner has sought to place reliance on **‘Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra & others’ 2019(1) RCR(Criminal) 675; ‘Deepak Gulati vs. State of Haryana’ (2013) 7 SC 675; ‘Gian Singh vs. State of Punjab & another’ (2012) 10 SCC 303; ‘Narinder Singh & others vs. State of Punjab & another’ (2014) 6 SC 466; ‘Anurag Soni vs. State of Chhattisgarh’ (SC) (CRA No.629 of 2019 decided on 09.04.2019); ‘Sunil Kumar vs. State of J&K & another’ (HC J&K) (CRMC No.512/2017) decided on 14.12.2018); ‘Nishan Singh @ Sandeep Singh vs. State of Punjab & others’ (HC P&H) (CRM-M No.34484/2017 decided on 13.11.2017); ‘Swati Aggarwal v. State & others’ (HC Delhi) (CRL.MC No.305/2017 decided on 24.01.2017) to hammer home the point and bring about distinction that it was a consensual relationship quite distinct and separate from the parameters of rape and therefore since the petitioner and the victim were grown up mature persons and remained in a relationship and thus being a consensual relationship and having effected settlement between themselves, such an FIR can be quashed on the basis of this settlement (Annexure P2).**

The same is sought to be opposed tooth and nail by learned State counsel primarily on the grounds that since offence of rape is a heinous offence and is not within the domain of purely a private offence

and having societal ramifications cannot be entertained and the FIR quashed.

Appreciating the submissions, in a recent view of Hon'ble the Supreme Court in '**The State of Madhya Pradesh vs. Laxmi Narayan & others**' (CRA No.349 of 2019 decided on 05.03.2019), a three-Judge Bench considering such an aspect had made following observations:-

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

- i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;*
- ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;*

- iii) *similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;*
- iv) *offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307*

IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

- v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was**

absconding, how he had managed with the complainant to enter into a compromise etc.

14. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused.”

Thus, in totality of what has come about in the prima facie allegations levelled by the victim, the nature of the offences where a poor victim has been forced into submitting herself to the whims and fancies of the petitioner and therefore, to suit the petitioner, her pregnancy was forcibly got aborted and she was used as a tool to satisfy the pleasures of the petitioner and his cohorts, has a telling effect on the society and therefore keeping in view the gravity of offence, conduct of the petitioner

as has been brought about in the allegations and being not a pure offence which is private in nature, has serious repercussions on the society and thus, this Court does not feel inclined to tow the line of the petitioner's counsel that such a petition is maintainable. Therefore, finding no merit, such a petition for quashment of the FIR (Annexure P1) on the basis of compromise, cannot be entertained in view of the offences being non-compoundable and of serious nature and consequence, and thus the petition stands dismissed on that ground.

(FATEH DEEP SINGH)
JUDGE

April 10, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No