

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

CRM-M-28022 of 2016.

Decided on:- January 17, 2019.

Deepak Kumar.

.....Petitioner.

Versus

Smt. Sonia and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Jasraj Singh, Advocate for
Mr. J.B.S. Gill, Advocate for the petitioner.

None for respondent No.1.

Mr. Jagmohan Ghumman, DAG, Punjab.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of private complaint No.60 dated 07.11.2011 titled as ***Sonia Versus Deepak Kumar etc.*** for offence under Sections 498-A, 406 and 506 read with Section 34 IPC filed in the Court of learned Additional Chief Judicial Magistrate, Hoshiarpur (Annexure P-1) and all subsequent proceedings arising therefrom on the basis of compromise dated 27.05.2016 (Annexure P-3).

Learned counsel for the petitioner has contended that the petitioner is living abroad and, therefore, the present petition has been filed through Smt. Sunita Rani, who is mother of the petitioner and is holding a valid power of attorney. He has relied upon the order dated 01.06.2018 passed by this Court in ***CRM-M-6890 of 2013*** titled as ***Mangal Das Gautam and***

another Versus State of Haryana and another whereby the Division Bench of this Court has held that the criminal proceedings under Section 482 of Cr.P.C. can be filed by an accused through an Attorney, but the circumstances under which it can be so filed and would be maintainable would be dependent upon various factors including facts and circumstances of that particular case, which is better left at the wisdom and discretion of the Court.

He has further contended that though petitioner Deepak Kumar, who is living abroad, has been declared as a proclaimed person, but once the other co-accused have been discharged by the trial Court, this Court can entertain the petition for quashing of the complaint, even if the petitioner was declared as a proclaimed person. In support of his contentions, he has relied upon the law laid down by the Division Bench of this Court in *Sudo Mandal @ Diwarak Mandal Versus State of Punjab 2011 (2) R.C.R. (Criminal) 453* wherein it has been held that the accused persons who have absconded and were declared proclaimed offenders and have not faced the trial, the prosecution qua them can be quashed by invoking the power under Section 482 Cr.P.C. to do the real and substantive justice and to prevent the abuse of process of law.

Vide order dated 13.11.2018, this Court, while directing the parties to appear before the trial Court to get their respective statements recorded with regard to compromise, passed the following order:

“The petitioner is abroad. He was declared proclaimed offender.

The counsel for the petitioner says that the petitioner was summoned in a complaint case and part payment had been made

and the remaining payment had been deposited by way of demand draft, which is with the Registry of this Court and the same can be handed over to respondent No.1.

The Registry would hand over the demand draft of a sum of Rs.3.5 lacs to respondent no.1 or to the counsel.

This is a petition for quashing of the complaint on the basis of compromise. The parties are directed to appear before the trial Court on 13.12.2018 for getting their statements recorded with regard to the compromise. The trial Court shall submit the report on or before the next date of hearing. The report be forwarded to this Court specifying the following:-

- 1. The number of accused arrayed in the FIR and how many have appeared before it and have made statements and whether any accused is absconding/P.O. in the case;*
- 2. The name of the complainant and aggrieved and whether all of them have appeared and made their statement in support of the compromise;*
- 3. the stage of trial/proceedings;*
- 4. if the compromise is genuine, voluntarily and out of free will of the parties.*

Report of the trial Court is awaited for 17.01.2019.”

Pursuant to the aforesaid order, the petitioner through his mother Sunita Rani as well as respondent No.1-complainant Sonia have appeared before learned Additional Chief Judicial Magistrate, Hoshiarpur and got their statements recorded on 18.12.2018. On the basis of the statements so recorded by the parties, learned Magistrate has submitted the report dated 05.01.2019 to the effect that a volunteer and genuine compromise has been arrived at between the parties. The trial Court has further reported that accused Deepak Kumar has been declared as a proclaimed person in the present complaint,

whereas the other co-accused Sunita Rani and Raj Kumar were discharged vide order dated 27.05.2016 passed by the trial Court.

The complaint in question against the petitioner was filed by respondent No.1 Sonia. Though no one has put in appearance on behalf of respondent No.1, but it would not cause any prejudice to her because she has already made a statement in support of compromise before learned Magistrate. Her statement so made before learned Magistrate on 18.12.2018 reads as under:

“A complaint was filed by me against Deepak Kumar s/o Raj Kumar (My husband), Sunita Rani (mother-in-law) and Raj Kumar (father-in-law) all r/o Billa Colony, Street No.2, Backside Dr. Navin Sharma, Distt. Hoshiarpur on 07.11.2011 vide registration No.COMI/2995/2013 u/s 498-A, 406, 506, 34 IPC. In the said case, Sunita Rani and Raj Kumar were discharged vide order dated 27.05.2016 whereas Deepak Kumar was declared proclaimed offender. Now, with the intervention of the respectable persons of the society, both the parties have effected the compromise. Now there is no dispute between us. The compromise Mark-A has been executed by me out of my free will and is without any fear, pressure, threat, coercion or undue influence and it has been made voluntarily and the same is genuine one. As per the compromise I have received Rs.3,50,000/- on earlier date. Today I have received a demand draft bearing number 260088 of State Bank of India dated 04.10.2018 in my name and same is of the value of Rs.3,50,000/- and as such I have received the complete settled amount. The custody of my son Manik would remain with Deepak Kumar, his father and I will not file any case for his custody in future. I would have no objection if the passport of Manik is prepared by his father Deepak Kumar. The compromise Mark-A bears my

signatures as well as that of Power of attorney of petitioner Deepak Kumar i.e. Sunita Rani (mother of Deepak Kumar, petitioner). There is no other complainant persons except me. I have no objection if the proceedings are quashed qua Deepak Kumar in regard to the present petition.”

Learned State counsel has not disputed the factum of compromise effected between the parties.

Hon'ble Supreme Court in ***Gold Quest International Private Limited Versus State of Tamil Nadu and others 2014 (4) RCR (Criminal) 206*** has held that the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr.P.C. read with Article 226 of the Constitution.

It being a matrimonial dispute and the petitioner-husband having authorized his mother to enter into compromise, this Court finds that in the light of the observations made in ***Mangal Das Gautam and another's case (supra)*** as well as ***Sudo Mandal @ Diwarak Mandal's case (supra)***, continuation of the proceedings before the trial Court in the instant complaint qua the petitioner shall be an abuse of the process of law.

Thus, following the principles laid down by the Full Bench judgment of this Court in ***Kulwinder Singh and others Versus State of Punjab and another 2007 (3) RCR (Criminal) 1052*** and approved by the Hon'ble Supreme Court in ***Gian Singh Versus State of Punjab and others (2012) 10 SCC 303*** as well as the law laid down in ***Gold Quest International***

Private Limited's case (supra), the present petition is allowed and the private complaint No.60 dated 07.11.2011 titled as ***Sonia Versus Deepak Kumar etc.***” for offence under Sections 498-A, 406 and 506 read with Section 34 IPC filed in the Court of learned Additional Chief Judicial Magistrate, Hoshiarpur (Annexure P-1) and all consequential proceedings arising therefrom are quashed qua the petitioner on the basis of compromise dated 27.05.2016 (Annexure P-3), however, subject to payment of costs of Rs.25,000/- to be paid by the petitioner to the Poor Patients’ Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh within a period of 15 days from today.

January 17, 2019

Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No