

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-40461 of 2016

Date of Decision: 19.07.2019

Jagjeet Singh & another

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

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

Present:- Mr. Anshuman Dalal, Advocate
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Rajesh Nain, Advocate
for respondents no.2 and 3.

HARI PAL VERMA, J. (Oral)

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of FIR No.258 dated 11.04.2016 under Sections 376(g), 363, 366, 420, 120-B, 506 IPC registered at Police Station City Jind, District Jind and all subsequent proceedings arising therefrom.

Initially, the aforesaid FIR was registered under Sections 363 and 366 IPC at the behest of respondent no.3-Chandi Ram, wherein he has stated that on 08.04.2016, his daughter, respondent no.2, who used to go to attend academy for coaching, had not returned till 2 o'clock in the evening. He suspected that Ashok, owner of the Gian Academy, where she was pursuing her studies, might have enticed her. When search was conducted

and Ashok, owner of the Gian Academy was questioned, he did not reply satisfactorily.

The FIR was investigated by the police and during the course of investigation, the complainant-respondent no.3 had informed the Investigating Officer that his daughter Nisha, respondent no.2, has solemnized marriage with petitioner no.1 – Jagjeet Singh. He produced a copy of the protection petition filed by the petitioner no.1 and respondent no.2 before the Court of District Judge, Jhajjar. However, thereafter, on 22.04.2016, respondent no.2 while joining the investigation had made a statement that the petitioners after administering some intoxicant substance to her, brought her to Gurgaon on a motorcycle, where they threatened to kill her and committed rape upon her against her consent from 08.04.2016 to 11.04.2016. Her statement under Section 164 CrPC was recorded by learned Additional Chief Judicial Magistrate, Jind and she was medico-legally examined on the same day. On the basis of this evidence, offence under Sections 376(g), 420, 506, 120-B IPC was added in the FIR.

Learned counsel for the petitioners while making reference to the protection petition filed by the petitioner no.1 and respondent no.2 has submitted that in fact, the petitioner no.1 and respondent no.2 had solemnised marriage on 11.04.2016 and on the relevant date, they were major. They are staying together as husband and wife. A daughter was also born to them out of this wedlock on 22.02.2017. The statement under Section 164 CrPC made by respondent no.2 was because of influence of her parents, but now, her entire family members have come forward and

accepted this matrimonial alliance. Therefore, the very proceedings before the Court would be nothing but an abuse of the process of law.

Mr. Rajesh Nain, Advocate has put in appearance on behalf of respondents no.2 and 3 and filed his power of attorney in Court, which is taken on record. Even respondent no.2 is also present in person.

Counsel for respondent no.2, on instructions from respondent no.2, states that she is happy with petitioner no.1 and they are staying together as husband and wife along with daughter.

Learned State counsel, on instructions from ASI Balwan Singh, submits that respondent no.2 is in fact playing with law, as on the one hand, she has made a statement under Section 164 CrPC leveling serious allegations against the petitioners, on the other hand, she has submitted an affidavit dated 24.05.2016 (Annexure P-8), to the effect that she had left her father's home with great difficulty and now, wants to reside with her husband-Jagjeet Singh.

I have heard learned counsel for the parties.

Under Section 482 CrPC, the inherent jurisdiction of the Court can be exercised in order to give effect to an order under the CrPC or to prevent the abuse of process of law or to secure the ends of justice. In **Inder Mohan Goswami v State of Uttaranchal** (2007) 12 SCC 1, while underlining the scope of Section 482 CrPC, the Apex Court observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 CrPC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which

alone it exists, or to prevent abuse of the process of the court.

Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court,*
- And*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

Similarly, in the case of **State of Haryana v. Bhajan Lal**

1992 Supp (1) SCC 35, Hon’ble the Apex Court has conducted an elaborate study of the situations where the Court may exercise its extraordinary jurisdiction and laid down a list of examples whereby quashing may be appropriate. In the said case it was noted that quashing may be appropriate where:-

“102(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

xx xx xx xx xx

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The law on the point of quashing of FIRs dealing with non-compoundable offences on the basis of compromise has been laid down by the Hon'ble Supreme Court in plethora of judgments. As laid down by the Hon'ble Supreme Court, powers under Section 482 Cr. P.C. are much more wider than that under section 320 Cr.P.C. The underlying object of the High Court while exercising power under Section 482 CrPC in such cases, as laid down in **Narinder Singh v. State of Punjab** (2014) 6 SCC 466, must be to meet the ends of justice or to prevent abuse of the process of law before any court. The Supreme Court in **State of Madhya Pradesh v. Laxmi Narayan** 2019(5) SCC 688 has laid down that the power conferred under Section 482 of the Code, to quash the criminal proceedings for non-compoundable offences, is not to be exercised in those prosecutions which involves 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. However, the High Court would not rest its decision merely because there is a mention of such offence in the FIR. It would be open to the High Court to examine as to whether incorporation of the offence is there for the sake of it or the prosecution agencies have collected sufficient evidence, which if proved, would lead to framing of charge and the conviction, ultimately.

As far as the offence of rape is concerned, the Supreme Court in **State of M.P. v. Madan Lal** 2015 (7) SCC 681 after considering **Shimbhu and Anr. v. State of Haryana** 2014 (13) SCC 318, has reiterated that rape is a non-compoundable offence and being an offence against the society at large, it cannot be left for the parties to compromise and settle.

The Court has delivered such a ruling, doubting the genuineness of the compromise and considering the fact that the perpetrator of crime accedes to enter into wedlock with the victim in order to put pressure upon her in an adroit manner.

However, the facts of the present case are peculiar, wherein, the respondent no.2-victim and petitioner no.1-accused married each other against the wishes of their parents and thereafter sought protection of life and liberty. The record attached with the petition does reflect that the petitioner no. 1 and respondent no. 2 were major on the date they got married and had sought protection from the Court of Sessions. Even father of respondent no. 2 (Chandi Ram), who is complainant, has also appeared before the District Judge, Jhajjar in the protection petition filed by petitioner no.1 and respondent no. 2 and made a joint statement along with his other family members i.e. Kitabo (wife) and Naveen (son), whereby they have shown their no objection to the marriage of petitioner no.1 and respondent no.2. Moreover petitioner no.1 had married with the alleged victim much before the FIR was lodged. Therefore the act of petitioner no.1 in marrying with the respondent no.2, cannot be construed to be driven by some ulterior motive.

The parties are living together as husband and wife and present is not one of those cases wherein the allegations are of extreme depravity, perversity and cruelty. It cannot be said that the offence in the instant case would fall in the category of offences that have a serious impact on the society. In the instant case, the parties, who were major on the date of marriage, have solemnized marriage though against the wishes

of parents of the girl and rather, sought protection from the Court of Sessions, as they were apprehending threat at the hands of the parents of respondent No.2. Probably under the threat of her parents, she has made statement under Section 164 Cr.P.C. naming the petitioners as accused for the offences as alleged in the FIR. But at the same time, now, she has submitted through her counsel that she is not desirous of prosecuting her husband any further. Therefore, the chances of conviction of the petitioners in the case are quite bleak, as the prosecutrix is not likely to support the case of prosecution, more importantly when a child is born to her. Similar view has been taken by the Kerala High Court in Criminal Misc. No.4349 of 2018, decided on 30.01.2019 titled as ***Akhil Kamal Versus State of Kerala and others***, wherein by invoking the extraordinary powers under Section 482 CrPC, the FIR in question and subsequent proceedings arising therefrom were quashed.

Moreover, the respondent No.2 had never remained consistent with her statement made under Section 164 Cr.P.C. before the learned Magistrate. She has taken the process of law for a ride for which though she needs to be prosecuted, but considering the fact that from the wedlock between the parties, they have a daughter of about 2 years of age, who in fact would be the real sufferer, this Court restrains from initiating such proceedings. Considering the fact that during trial, the possibility of conviction in the instant case is too remote and bleak, therefore, the continuation of proceedings before the trial Court would lead to the petitioners and their families to a great oppression. In case the trial is allowed to be continued, the prosecutrix is not going to support the case of

the prosecution and continuation of such proceedings would be futile exercise. This Court finds that present is a fit case where the provisions of Section 482 Cr.P.C. can be invoked and accordingly, the end of justice would be met if the FIR in question is quashed, but subject to payment of costs to be borne by respondent No.2 for shifting her statement conveniently.

Accordingly, the present petition is allowed and FIR No.258 dated 11.04.2016 under Sections 376(g), 363, 366, 420, 120-B and 506 IPC registered at P.S. City Jind, District Jind (Annexure P-1) and the subsequent proceedings arising therefrom are quashed, subject to payment of costs of Rs.25,000/-, which shall be paid by respondent no.2 to the Post Graduate Institute of Medical Education and Research (PGIMER), Rohtak, within one month from the date of receipt of a certified copy of this order, for the welfare of the poor patients.

However, it is made clear that in case the costs is not deposited within one month from the date of receipt of a certified copy of this order, the present petition shall be deemed to have been dismissed.

Needless to say that the present judgment is confined to the peculiar facts of the case and is not to be treated as a binding precedent.

July 19, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No