

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 29870 of 2019
Date of Decision: 31.10.2019**

Nikhil Saraf

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Pawan Kumar Mutneja, Advocate
for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

HARNARESH SINGH GILL, J. (ORAL)

This petition has been filed for quashing of FIR No. 278 dated 28.12.2017 registered under Sections 406, 420 IPC, Police Station Phase-1, District SAS Nagar (Annexure P-1) and all the consequent proceedings arising therefrom, in view of the settlement (Annexure P-2) arrived at before the Mediation and Conciliation Centre of this Court.

Mr. H.S.Dhillon, Advocate has put in appearance on behalf of respondent No. 2 and filed his power of attorney which is taken on record.

Vide order dated 16.7.2019 passed in CRM-M-3487-2018, the petitioner was granted anticipatory bail on the basis of compromise effected between the parties and the statement of the counsel for respondent No. 2 stating that the complainant has received the amount in question. The said order is reproduced hereunder:-

“Petitioner Nikhil Saraf has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.278 dated 28.12.2017, registered at Police Station Phase-1,

District SAS Nagar, under Sections 406/420 of the Indian Penal Code.

Notice of motion was issued.

Learned State counsel and counsel for respondent No.2/complainant have appeared.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

Learned counsel for respondent No.2 states that respondent No.2/complainant has already received the amount in question and has no objection if the anticipatory bail is granted to the petitioner.

In pursuance of the interim order dated 29.01.2018, passed by this Court, the petitioner has already joined the investigation. He is not required for custodial interrogation. No useful purpose would be served by sending the petitioner to custody.

Keeping in view the facts and circumstances of the present case; in view of the compromise effected between the parties and the statement of the counsel for the complainant; without discussing the facts of the case in minute details and without expressing any opinion on the merits of the case, I find merit in this petition and the same is allowed. The order dated 29.01.2018, granting interim bail to the petitioner, is made absolute. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions of Section 438 (2) Cr.P.C. ”

Learned counsel for respondent No. 2 states that the matter has been amicably settled and they have no objection if the FIR in question is quashed.

The Hon'ble Full Bench of this Court in case ***Kulwinder Singh vs. State of Punjab and another, 2007(3) RCR (Criminal) 1052*** and Hon'ble Division Bench of this Court in case ***Sube Singh and another vs.***

State of Haryana and another, 2013(4) RCR (Criminal) 102 observed that

compounding of offence can be allowed even after conviction, during proceedings of the appeal against conviction pending in Sessions Court and in case of involving non-compoundable offence.

Hon'ble Apex Court in the case of ***Gian Singh Versus State of Punjab and another. 2012(4) RCR (Criminal) 543*** has held as under:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial,

mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. or the family disputes where the wrong is basically private or personnel in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

The same view has been recently reiterated by Hon'ble the Apex Court in case ***Narinder Singh and others Vs. State of Punjab and another, 2014(2) RCR (Criminal) 482.***

The parties have settled the dispute before the Mediation and Conciliation Centre of this Court. The agreement dated 6.9.2018 arrived at before the Mediator has been placed on record as Annexure P-2. Since the parties have arrived at a compromise and that the complainant has received the amount in question, no useful purpose would be served in allowing the criminal proceedings to continue.

Accordingly, this petition is allowed. FIR No. 278 dated

28.12.2017 registered under Sections 406, 420 IPC, Police Station Phase-1, District SAS Nagar (Annexure P-1) and all the consequential proceedings, arising therefrom, are quashed.

(HARNARESH SINGH GILL)
JUDGE

October 31, 2019
Gurpreet

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