

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11492-2020

Date of Decision : 20.03.2020

Rajender Kumar.....Petitioner

Versus

State of Haryana and another..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Punit Malik, Advocate
for the petitioner

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MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 91 dated 01.08.2019 under Section 376 IPC registered at Women Police Station, Gurgaon (Annexure P1) along with all consequential proceedings emanating therefrom on the basis of Compromise deed dated 06.03.2020 (Annexure P2).

It has been pleaded by the learned counsel that the petitioner, who is an accused in the aforementioned FIR, and the prosecutrix i.e. respondent No.2 are leading a happy married life and have amicably settled their dispute. It has been further urged by the learned counsel that continuation of criminal proceedings would be an exercise in futility in view of the compromise (Annexure P-2) so arrived at between the petitioner and the prosecutrix. Hence, the FIR in hand be quashed as the compromise between the parties was effected "out of free will and without any kind of force, pressure, coercion or undue influence".

The learned counsel has placed reliance on *Kulwinder Singh v.*

State of Punjab (CRM-M-57189/18) in support of his case.

I have heard the learned counsel at length and minutely perused the petition and other material on record.

It would be ad rem to refer to the allegations levelled by the prosecutrix against the petitioner in the FIR in question.

Allegedly, the petitioner after forging a fake facebook account in the name of one Rajiv Kumar (a relative of the wife of the prosecutrix's brother) lured the prosecutrix into a relationship with him. A year prior to the registration of the FIR in hand, the prosecutrix had been raped by the petitioner. The prosecutrix thereafter, cut off all communication with the petitioner. Resultantly, the petitioner started blackmailing her with the sinister threat to upload her pictures on facebook, which he actually followed through by circulating her phone number in his circle of friends. He not only threatened the prosecutrix but additionally her family too if she discontinued her dalliance with him, coercing her to abandon her husband and children.

Doubtlessly, as per the provisions of Section 482 Cr.P.C. this Court has been vested with wide powers of discretion which on the surface come across as limitless. However, concurrently a judicial obligation is cast upon this court to exercise its powers for quashing an FIR with a great deal of caution and prudence. And, if quashing of an FIR is sought on the basis of a compromise between the parties, it becomes all the more incumbent upon this court to be extremely circumspect not only about the terms and conditions of the compromise but also the nature and gravity of the offences so as to prevent an abuse or misuse of the process of law. Once the conscience of the court is satisfied that the compromise effected between

the accused and the prosecutrix/complainant is unfeigned and forthright, it should without any hesitation exercise its powers under Section 482 Cr.P.C. to give effect to the principle enunciated therein i.e. “to prevent abuse of process of court” and “to secure the ends of justice” as compromise is a pre-requisite for harmony and balanced relations in consonance with the norms of a civil society.

It is precisely for this reason, this court in ***Gursharan Singh v. State of Punjab (supra)*** quashed the FIR registered under Section 376 IPC as prolongation of criminal proceedings would not have validated the ends of justice. In ***Gursharan Singh's case (supra)***, the parties had been in a relationship. Due to some dispute, the accused had refused to marry the prosecutrix. As a result, the prosecutrix had lodged a complaint leading to the registration of an FIR under Section 376 IPC against the accused. However, soon thereafter, the prosecutrix and the accused reconciled their differences and solemnized their marriage. Ever since their marriage, the accused and the prosecutrix had been leading a happy married life. Out of their wedlock, a child too had been born. In the wake of things, this court invoked its powers under Section 482 Cr.P.C. to quash the FIR and all consequential proceedings arising therefrom.

The question which thus, arises for consideration is – Whether this court should exercise its discretion in the present case also by invoking its inherent powers under Section 482 Cr.P.C. and quash the FIR registered under Section 376 IPC on the basis of a compromise supposedly arrived at, between the parties “out of free will and without any kind of force, pressure, coercion or undue influence”.

I am afraid the facts of the instant case are clearly

distinguishable from *Gursharan Singh's case (supra)* and would be of no avail to the petitioner. No doubt, the learned counsel has pleaded that since the parties are now happily married, no useful purpose would be served if the FIR and all consequential proceedings emanating therefrom are not quashed. However, the reliance placed by the learned counsel on *Gursharan Singh's case (supra)* is highly misplaced. As already noticed, in *Gursharan Singh's case (supra)* the parties got married, had a child and had been leading a happy married life, for more than 2 years preceding the petition filed under Section 482 Cr.P.C. seeking quashing of the FIR. On the contrary, in the case in hand, the prosecutrix was a married woman, having children when the alleged crime in question was committed by the petitioner. This Court thus, finds the plea of the learned counsel incomprehensible as to how “the parties being happily married now” would be of any consequence. This plea is both nugatory and pointless. It is not the case of either of the parties that the prosecutrix was unhappy in her marriage with her husband when the alleged crime was committed by the petitioner or both the prosecutrix and the petitioner had married after the registration of the FIR in question and had been living happily with each other. Apparently, it is the petitioner, who got married with another lady during the pendency of the FIR against him. Hence, his current marital status would have no bearing on the crime allegedly committed by him. The court cannot and should not make any prejudicial distinction in the quashing of an FIR based on a frivolous ground of the marital status of an accused at the time of, or subsequent to the commission of an alleged offence.

Furthermore, as per the compromise deed (Annexure P-2) the matter had been amicably settled voluntarily and without any pressure,

undue influence etc. Though the compromise deed records that there was no undue influence exerted on the prosecutrix and there is no mention of any monetary consideration in it, the truth comes tumbling out on a reading of the petition. Legal niceties and clever use of words cannot obfuscate the real issues. Contents of the petition help in unraveling the truth, through money, undue influence was indeed brought to bear upon the prosecutrix to enter into a compromise with the petitioner. It would be apposite to reproduce para 5 of the petition:-

“5. That after the amicable settlement between both the parties regarding the above said FIR, now, both the parties are ready to quash the FIR as the complainant had already received the entire amount.”

A perusal of the contents of para 5 of the petition reveals that money changed hands. It is not hard to discern that it was ostensibly done with a view to silence and win over the prosecutrix i.e. respondent No.2. Such predatory instincts must be curbed. If there is a case of exerting undue influence, this is one!

All undue influence is not bribe, but bribe is certainly undue influence which as already noticed is discernible from the fact that some “amount” was offered by the petitioner to the prosecutrix for effecting the compromise (Annexure P2). This would certainly fall within the ambit of 'undue influence' as it would amount to bestowing an unscrupulous gift to influence the prosecutrix from pursuing criminal proceedings against the accused.

The Hon'ble Supreme Court in ***State of M.P. v. Laxmi Narayan***

2019 (2) RCR (Crl.) 255 has laid down the principles for quashing of

criminal proceedings on the basis of compromise. It would be relevant to reproduce the observations of the Supreme Court in Para 13 (ii) and (v):-

“13(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;

13(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.”

The Supreme Court in ***Parbhatbhai Aahir v. State of Gujarat and Anr.*** 2017 AIR (SC) 4843 discussed the scope and powers of the High Court under Section 482 Cr.P.C. to quash criminal proceedings in heinous and serious offences on the basis of the parties amicably settling their dispute and laid down the following law:-

“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

*(i) **Section 482** preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to*

secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is

founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and

(ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

The reliance placed by the learned counsel on ***Kulwinder Singh's case (supra)*** would thus not come to the rescue of the petitioner in view of the settled law of the Hon'ble Supreme Court in ***Laxmi Narayan's case (supra)*** and ***Parbhatbhai Aahir's case (supra)***.

Adverting to the case in hand, there are serious and grave

unabashedly indulged in blackmailing and threatening her and her family. The allegations levelled in the FIR, *prima facie* reflects the mental depravity of the petitioner who tried to exploit a hapless married woman by fraudulently luring her into a relationship with him, raping her and thereafter putting her matrimonial ties with her husband in peril by coercing her to continue her dalliance with him.

As a sequel to the above discussion, this court does not find it a fit case to invoke its inherent jurisdiction under Section 482 Cr.P.C. to quash FIR bearing No. 91 dated 01.08.2019 under Section 376 IPC registered at Women Police Station, Gurgaon (Annexure P1).

Dismissed. However, any observations made herein above would not be construed to be an expression of opinion on the merits of this case.

20.03.2020

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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No