

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

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**CRM-M-31265-2014
Date of decision : 19.02.2020**

Sonia and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Paramjit Singh Jammu, Advocate
for the petitioners.

Mr. Arjun Singh Yadav, AAG Haryana
for respondent No.1-State.

None for respondent No. 2.

ARUN KUMAR TYAGI, J (ORAL)

Petitioners-**Sonia** and **Ramesh Kumar @ Bittu** have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C') for quashing of FIR No.10 dated 13.01.2013 registered under Section 365 of the Indian Penal Code, 1860 (for short "the IPC") at Police Station Kunjpura, District Karnal (**Annexure P-1**) along with all consequential proceedings arising therefrom.

The above said FIR was registered on complaint submitted by respondent No.2-Banto to the SHO, Police Station Kunjpura, District Karnal. In the complaint respondent No. 2 Banto alleged that on 07.01.2013 she went to bring fodder from the field for the cattle. On her return she found her daughter Sonia aged 15 years missing from the house. She made enquiries and had doubt that her daughter had gone

with Bittu Singh but she could not find any clue. Respondent No.2-Banto accordingly requested that her daughter may be got traced.

The petitioners have sought quashing of the above said FIR and consequential proceedings arising therefrom on the grounds that petitioner No. 1 being aged about 21 ½ years and petitioner No. 2 being aged about 22 years are major. Petitioner No. 1 is niece of mother's brother of petitioner No. 2. The petitioners decided to marry each other. Father of petitioner No. 1 had already died. Petitioner No. 1 tried to persuade respondent No. 2 to accept the marriage but respondent No. 2 being under the influence of paternal uncle of petitioner No. 1 refused, on which the petitioners married each other on 17.01.2013 as per Hindu rites and ceremonies at Radha Madhav Mandir, Police Lines, Sirsa against the wishes of respondent No.2-mother of petitioner No.1. Respondent No. 2 under the influence of paternal uncle of petitioner No. 1 made complaint to the police and petitioner No.1 was sent to Nari Niketan on 17.02.2013. After four days respondent No.2 got her released from Nari Niketan on the pretext that petitioner No. 1 will be sent with her husband i.e. petitioner No.2 to her matrimonial home but again respondent No.2 backed out from her promise and tried to marry petitioner No.1 with some other person of her choice after taking money from him. On 10.07.2013 petitioner No. 1 flew from her parental house and joined the society of petitioner No. 1 and thereafter solemnized the marriage. As the police, respondent No.2 and her relatives harassed the petitioners, they filed protection petition CRM-M-24052-2013 on which this Court vide order dated 26.07.2013 directed Superintendent of Police Sirsa to look into the grievances of

the petitioners and take appropriate action. Even prior thereto petitioner No. 1 had filed complaint under the protection of women from Domestic Violence Act, 2005 against petitioner No. 2 which was subsequently withdrawn. Petitioners are living happily and one male child named Arshdeep was born out of the wedlock on 24.06.2014. The police is unnecessarily harassing the petitioners under the garb of above said FIR and their married life is in danger. The petitioners have accordingly prayed that the FIR and consequential proceedings arising out of the same being abuse of process may be quashed.

Notice of the petition was given to the respondents. Respondent No. 1 filed reply by way of affidavit of Sh. Rajesh Kumar, HPS, Deputy Superintendent of Police, Karnal and status report in terms of affidavit of Sh. Raj Kumar, HPS, Deputy Superintendent of Police, (City) Karnal. In the reply, it has been submitted that as per School Living Certificate issued by the Head Master, Government Medical School, Nisarpur (Karnal) the date of birth of petitioner No. 1 is 15.07.1996 and at the time of alleged incident she was aged 16 years 8 months. During investigation petitioner No. 1 was produced before learned Illaqa Magistrate, Karnal who recorded her statement under Section 164 of the Cr.P.C. In her statement petitioner No. 1 stated that she of her own sweet will left her house with petitioner No. 2 and that she wanted to go petitioner No. 2 and did not want to go with her mother. Petitioner No. 1 was taken to Kalpna Chawla Medical College and Government Hospital, Karnal for her medical examination but she refused to get herself medico legally examined. Thereafter, the petitioner was taken to Nari Niketan, Karnal as per court order.

Petitioner No. 2 could not be arrested and was declared proclaimed person vide order dated 26.08.2013. On investigation petitioner No. 2 was found to have enticed petitioner No. 1 and Section 365 was deleted and Sections 363 and 366 A of the IPC were inserted. On completion of investigation, report under Section 173 (2) of the Cr.P.C. was filed on 18.09.2013. Respondent No. 1 has accordingly pleaded that in view of these facts and circumstances, the petition may be dismissed.

During pendency of the petition learned State Counsel on instructions from the Investigating Officer submitted that respondent No. 2 did not want to pursue the complaint. The Co-ordinate Bench of this Court vide order dated 05.02.2016 directed that trial Court/Illaq Magistrate shall record statements of parties with regard to settlement/compromise, if any and submit a report within two weeks containing the following information:-

- a) number of persons arrayed as accused in FIR.
- b) whether any accused is proclaimed offender.
- c) whether compromise is possible voluntarily between the parties.

In compliance with above said order, learned Judicial Magistrate First Class Karnal recorded statement of respondent No. 2 Banto who stated that her daughter Sonia is residing with her husband Bittu happily in her matrimonial home and she does not want to proceed further against the accused (petitioner No. 2) with FIR No. 10 dated 13.01.2013. She further stated that she was making the statement of her own free will and without any undue influence and pressure.

Learned Judicial Magistrate First Class Karnal submitted report dated

29.02.2016, the relevant part of which reads as under :

- “ i) In the present FIR there is only one accused namely Bittu Singh son of Mohinder Singh, resident of Salarpura, District Sirsa.
- ii) The said accused Bittu Singh has been declared Proclaimed Person in the said FIR No. 10 dated 13.01.2013 vide order dated 26.08.2013.
- iii) As per the statement recorded by the complainant this court is of the considered view that the complainant has voluntarily stated that she does not want any action against the accused Bittu in FIR No. 10 dated 13.01.2013.”

I have heard learned Counsel for the petitioners and learned State Counsel and gone through the relevant record who have in their submissions reiterated their respective pleas taken in the petition and the reply.

Section 482 of the Cr.P.C. provides that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In ***State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991 (1) RCR (Criminal) 383***, Hon'ble Supreme Court has observed as under:-

"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power

should be exercised.

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.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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."

In *Varala Bharath Kumar v. State of Telangana, (SC) :*

2017(4) R.C.R.(Criminal) 113 Hon'ble Supreme Court observed as under:-

"It is by now well settled that the extraordinary power under Article 226 or inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the

complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; 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 power under Article 226 of the Constitution of India or under section 482 of Code of Criminal Procedure may be exercised.”

In the present case FIR was registered against the petitioner No. 2 initially under Section 365 of the IPC but on investigation on finding that the petitioner No. 2 had enticed petitioner No. 1, the police deleted Section 365 of the IPC and substituted Sections 363 and 366-A of the IPC and after getting petitioner No. 2 declared as proclaimed person on 26.08.2013, filed report under Section 173 (2) of the Cr.P.C. on the allegations that petitioner No. 2 had kidnapped petitioner No. 1 Sonia minor daughter of respondent No. 2 – Banto to compel her to marry him. In her statement under Section 164 of the Cr.P.C. petitioner No. 1-Sonia stated that she of her own sweet will left her house with petitioner No. 2. In the present petition the petitioners have pleaded that petitioner No. 1 out of her own free will solemnized marriage with petitioner No. 2 on 17.01.2013. The petitioners also filed petition CRM-M- 24052 of 2013 for protection of their life and liberty which was disposed of vide order dated 26.07.2013 with direction to the Superintendent of Police, Sirsa to take appropriate action. Marriage of petitioner No. 1 with petitioner No. 2 was not void due to petitioner No.

voidable at her instance. Since, petitioner No. 1 had gone with petitioner No. 2 out of her own free will and had solemnized marriage with him on 17.01.2013, offences under Sections 363 and 366 A of the IPC were not made out against petitioner No. 2. In view of these facts and circumstances, the allegations made in the FIR and report under Section 173 (2) of the Cr.P.C. do not prima facie constitute any offence or make out the case against petitioner No. 2. Therefore, the above said FIR and all consequential proceedings including order dated 26.08.2013 declaring petitioner No. 2 as proclaimed person being abuse of process are liable to be quashed for securing the ends of justice.

Even otherwise, during pendency of the present petition, on direction given by the Co-ordinate Bench of this Court vide order dated 09.05.2016 learned Judicial Magistrate First Class, Karnal recorded statement of respondent No. 2 - Banto who stated that her daughter petitioner No. 1 is living with her husband petitioner No. 2 in her matrimonial house and she did not want to proceed further against petitioner No. 2.

It is also now well settled that the High Court has inherent power to quash the criminal proceedings in non-compoundable cases on the basis of settlement between the parties for securing the ends of justice or to prevent abuse of the process where the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case. Criminal cases having overwhelmingly and predominantly civil character particularly those arising out of commercial transaction or

arising out of matrimonial relationship or family dispute can be quashed when the parties have resolved their entire dispute among themselves. However, such power cannot be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape dacoity, etc. which are not private in nature and have a serious impact on society. Similarly, prosecution for offences alleged to have been committed under special enactments like the Prevention of Corruption Act or the offences committed by public servant while working in that capacity cannot be quashed on the basis of compromise between the victim and the offender. For judicial precedents in this regard, reference may be made to *Narinder Singh Vs. State of Punjab (Supreme Court) : 2014 (2) RCR (Criminal) 482*, *State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255* and *Kulwinder Singh and others Vs. State of Punjab and others (Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052*.

As the offences involved are predominantly of private nature not having any social impact, quashing of the FIR and consequential proceedings is also warranted in view of the settlement between the parties as the possibility of conviction is remote and bleak and continuation of the criminal case will subject petitioner No. 2 to great oppression and injustice.

In view of the above discussion, FIR No.10 dated 13.01.2013 (**Annexure P-1**) registered under Section 365 of the IPC at Police Station Kunjpura, District Karnal and charge sheet and all consequential proceedings arising therefrom, including order dated

26.08.2013 declaring petitioner No. 2 as proclaimed person, are quashed.

The petition is allowed accordingly.

19.02.2020

kothiyal/kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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