

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

CRM-20577-78-2020 in/and
CRA-S-1173-SB-2019 (O&M)
Date of decision: 3.9.2020

Major Singh

...Applicant-appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Sandeep Chopra, Advocate for the applicant/appellant

Mr.BS Sewak, Addl.AG, Punjab

JITENDRA CHAUHAN, J.

The matter has been taken up through video-conferencing in the light of the pandemic Covid-19 situation and as per instructions.

CRM-20577-2020

Learned counsel for the applicant states that the applicant was released on parole. After expiry of the parole period, he had repeatedly approached the jail authorities to surrender but he was not admitted to jail. During the pendency of the present appeal, a compromise (Annexure A-3) has been effected between the parties.

The present application is for disposal of the main appeal on the basis of the compromise (Annexure A3) reached between the parties.

Keeping in view the peculiar facts and circumstances of the case, the main appeal is taken on today's board with the consent of the parties.

Main appeal

The present appeal has been filed against the judgment and order dated 2.4.2019 passed by learned Special Judge, Mansa, vide which, the appellant has been convicted and sentenced to undergo RI for a period of three years and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo RI for a period of 15 days for the offence punishable under Section 363 IPC and further sentenced to undergo RI for a period of ten years and to pay a fine of Rs.5000/- and in default of payment of fine to further undergo RI for a period of two months for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

Learned counsel for the applicant/ appellant submits that the prosecutrix being major as per record maintained by Gurudwara Sahib Shri Guru Arjan Dev Ji, District Ferozepur, as she herself stated date of her birth as 20.1.1998 before the said Gurudwara Sahib. The prosecutrix out of her free will came to the appellant to solemnize marriage as they were closely known to each other. The appellant under the *bona fide* impression that the prosecutrix was major, performed the marriage. Now the prosecutrix is the legally wedded wife of the appellant. The marriage in question still subsists and has not been dissolved by any Court of law.

It is further asserted by learned counsel for the appellant that the prosecutrix was forcibly taken away by the complainant and other family members, whereupon the appellant moved a criminal writ petition for habeas corpus bearing No.919-2016 before this Court. Upon notice, the

prosecutrix had appeared and made a statement under the influence of her parents that she did not want to accompany the appellant. The said writ petition was disposed of on 22.7.2016. Now during the pendency of the present appeal, a compromise (Annexure A-3) has been effected between the parties.

The appellant also stands convicted by the learned trial Court under Section 6 of POCSO Act for committing aggravated penetrative sexual assault upon the prosecutrix. However, the offence under Section 6 of the POCSO Act cannot be said to be made out against the appellant as the appellant and the prosecutrix had solemnized marriage and their marriage is still subsisting. It is thus difficult to sustain the conviction of the appellant under Section 6 of the POCSO Act.

As per the prosecution, the prosecutrix was studying in 10+2 class in the year 2016 and date of her birth is 28.2.2000 as evident from copy of application form Ex.PW3/A, entry in admission and withdrawal register Ex.PW3/B and certificate Ex.PW3/C issued by the then Principal. She was more than 16 years and less than 18 years of age at the time of incident. Thus, the prosecutrix was a minor at that time and was kidnapped by the appellant from the lawful guardianship of her parents. Consequently, Section 363 IPC stands proved against the appellant.

Vide order dated 28.11.2019 passed in CRM-12717-2019, the parties were directed to appear before the learned trial Court for getting their statements recorded. In compliance thereof, report of the trial Court dated 12.12.2019, has been received, wherein, it has been noticed that the

compromise between the parties is genuine and voluntary; and without any pressure.

Hon'ble the Supreme Court in **Gian Singh Vs. State of Punjab and another, 2012(4) RCR (Criminal) 543**, has observed 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 personal 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.”

In Narinder Singh and Others Vs. State of Punjab and

Another (2014) 6 SCC 466, it has been observed thus:-

“31. In view of the aforesaid discussion, we sum up and

lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that

capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there

is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

A Division Bench of this Court in “**Sube Singh and another vs. State of Haryana and another 2013(4) RCR (Crl.) 102**” has held as under:

“21. In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 CrPC after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.”

In the instant case, in view of the report of the trial Court dated

12.12.2019 made in pursuance of the order dated 28.11.2019 passed by this Court, the guidelines laid down by Hon'ble the Supreme Court and a Division Bench of this Court and going by the fact that the age of the prosecutrix has been disputed and the compromise has been arrived at between the parties and other surrounding facts and circumstances of the case, the Court feels that the compromise in the matter is in the interest of both the parties as the same would facilitate chance of making a fresh beginning in life of both the parties. This Court is of the considered opinion that no useful purpose would be served in keeping the proceedings alive.

In this view of the matter, FIR No.65 dated 20.8.2016 registered under Sections 376, 363, 366-A, 120-B IPC and Sections 3, 4 & 5 of POCSO Act at Police Station Boha, District Mansa and all consequential proceedings including the impugned judgment of conviction and order of sentence dated 2.4.2019 passed by the learned trial Court qua the appellant are set aside. Resultantly, the appeal is disposed of.

Since main appeal has been disposed of, the pending miscellaneous application(s), if any, stand disposed of.

3.9.2020
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No