

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 26811 of 2020 (O&M)
Date of Decision: 09.9.2020

Gurpiar Singh @ Kaato Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Narender Singh Kamboj, Advocate
for the petitioners.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 0010 dated 17.2.2020 registered under Sections 363, 366-A, 506, 376 IPC and Sections 3, 4 and Section 18 (added later on) of Protection of Children from Sexual Offences Act, 2012 ('Act' for short), Police Station Sadiq, District Faridkot (Annexure P-1) and all the consequent proceedings arising therefrom, on the basis of affidavit dated 14.8.2020 (Annexure P-2) duly sworn by the parents of the prosecutrix with the consent of the prosecutrix.

Learned counsel for the petitioners submits that as per the affidavit dated 14.8.2020 (Annexure P-2), the complainant-prosecutrix has affirmed that she could not recognize the accused as their faces were covered with handkerchief and she has named the petitioners on the basis of suspicion and that they are not involved in the present FIR. Learned

counsel further submits that the parents of the prosecutrix have no objection if the present FIR is quashed as their daughter after her marriage, is living a settled life.

Notice of motion to respondent No. 1-State only.

On the asking of the Court, Mr. Ajay Pal Singh Gill, DAG, Punjab accepts notice on behalf of the State. He has opposed the prayer made by the petitioners and pointed out that there are specific allegations of rape against the petitioners and that the said offence cannot be allowed to be compounded.

I have heard the learned counsel for the petitioners and the learned State counsel.

In the present case, FIR under Section 363, 366-A, 376 and 506 IPC and Sections 3, 4 and 18 of the Act was registered on 17.2.2020 against the petitioners on the statement of respondent No. 4 wherein she alleged that on 13.2.2020 at about 8.00 A.M., when she had gone to collect the woods, near the electricity transformer, three persons having their faces covered with handkerchiefs, out of whom one was petitioner No. 1, took her forcibly by making her sniff something. Due to this, she became unconscious and petitioner No.1-Kaato committed rape upon her, whereas the other two remained outside the room.

The case is at the initial stage and charges are yet to be framed. The petitioners have sought quashing on the basis of compromise effected with the prosecutrix.

In *Gian Singh Versus State of Punjab and another. 2012(4)*

RCR (Criminal) 543, Hon'ble Apex Court has dealt with the scope of powers of High Court to quash the criminal proceedings involving non

compoundable offences in view of the compromise arrived at between the parties. Various guidelines were laid down and categories of cases in which such powers can be exercised. The relevant extract would read 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-dominatingly 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.”

A perusal of the aforesaid observations shows that offence of rape was considered to be one of the heinous and serious offences which is not private in nature but has a serious impact on the society and, therefore, even if the parties have settled the disputes, the Court should not exercise its inherent jurisdiction for quashing of the FIR in such cases.

Admittedly, in the present case, the FIR has been registered for various offences including the one under Sections 376 IPC and POCSO Act. Therefore, the reliance of the petitioners on the affidavit dated 14.8.2020 (Annexure P-2) is of no help to them. The aforesaid offence(s) is not a private offence and rather the same is against the whole society and hence, in view of the judgment of the Hon'ble Supreme Court in **Gian Singh's**

case, the FIR and the consequential proceedings arising therefrom cannot be quashed.

The petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

September 09, 2020
Gurpreet

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