

CRM-M-30033-2020 (O&M)

Date of decision : December 22, 2020

Karan Sharma

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent:- Mr. Rahul Sharma, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Amitabh Tewari, Advocate
for respondent No.2.**ARVIND SINGH SANGWAN, J. (Oral)**

By way of the present petition, filed under Section 482 Cr.P.C., the petitioner has prayed for quashing of FIR No.61 dated 25.08.2020 under Sections 376(2)(N) IPC, registered at Women Police Station, District Gurugram and all the subsequent proceedings arising therefrom, on the basis of the compromise entered into between the parties.

Vide order dated 28.09.2020, the parties were directed to appear before the trial Court and the trial Court was directed to record the statements of the parties and submit a report regarding number of persons arrayed as accused in the FIR; whether any accused is proclaimed offender; whether the compromise is genuine, voluntary and without any coercion or undue influence and whether any accused person is involved in any other FIR. The trial Court was also directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR.

A report dated 07.12.2020, has been submitted by the Judicial Magistrate 1st Class, Gurugram, wherein it has been reported that statements

of the petitioner and respondent No.2 have been recorded and statements made by the parties in the Court reveal that they have voluntarily entered into a compromise and the Court is satisfied that the parties have amicably settled their dispute without any fear, pressure, threat or coercion and out of their free will.

Learned counsel for the petitioner submits that no other criminal case is pending between the parties and none of the petitioner has been declared as proclaimed offender. Counsel for the petitioner has also relied upon the judgment **“Pramod Suryabhan Pawar vs State of Maharashtra”, 2019(9) SCC 608**. The operative part of the said judgment reads as under :-

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to [Section 375](#) must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1 The complainant and the appellant knew each other since 1998 and were intimate since 2004;

19.2 The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each

other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and

19.3 The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

20. The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under [Section 375](#) of the IPC has occurred."

Learned State counsel, on instructions from Investigating Officer, has not disputed the fact that the parties have arrived at a settlement with an intent to give burial to their differences.

Counsel for respondent No.2 has also acknowledged the factum of compromise between the parties.

I have heard learned counsel for the parties and perused the case file.

As per the Full Bench judgment of this Court in ***Kulwinder Singh and others Vs. State of Punjab, 2007 (3) RCR (Criminal) 1052***, it is held that the High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court feel that the same was required to prevent the abuse of the process of law or otherwise to secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

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

“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 predominatingly 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.”

Since the parties have arrived at a compromise and have decided to live in peace, no useful purpose would be served in allowing the criminal proceedings to continue.

In view of the above discussion, present petition is allowed and FIR No.61 dated 25.08.2020 under Sections 376(2)(N) IPC, registered at Women Police Station, District Gurugram and all the subsequent proceedings, arising therefrom, qua the petitioner, are ordered to be quashed.

December 22, 2020
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No