

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

CRM-M-36454-2020 (O&M)

Date of decision: 10.11.2020

Ankush Sharma

...Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Aman Priye Jain, Advocate for the petitioner.

Ms. Samina Dhir, DAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This petition is for quashing of FIR No. 124 dated 02.06.2020 registered under Sections 376, 511 IPC and Sections 8 and 10 of the Protection of Children from Sexual Offences (**POCSO**) Act, 2012, at Police Station Fazilka, and stay the proceedings pending in the aforesaid FIR before the learned trial Court at Fazilka, on the basis of a compromise dated 15.06.2020 (Annexures P-2).

Learned counsel for the petitioner submits that the compromise has been effected between the parties. Section 376 read with Section 511 IPC was deleted from the FIR and matter was sent for legal opinion regarding addition of Section 354 IPC.

He further submits that the compromise was executed by complainant-Jaswinder Singh, father of the minor girl, with Usha Rani-mother of the petitioner.

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 petitioner on the affidavit dated 15.06.2020 (Annexure P-2) is of no help to him. 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(supra)*, the above-noted FIR and the consequential proceedings arising therefrom cannot be quashed.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

10.11.2020

Mangal Singh

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No