

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.47266 of 2019
Date of Decision:05.03.2020

Pankaj @ Sikandar Kumar

...Petitioner

Versus

State of U.T., Chandigarh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Jasreet Singh, Advocate
for the petitioner.

Mr. Deepinder S. Brar, Addl. PP, U.T., Chandigarh.

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JAISHREE THAKUR, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.10 dated 09.01.2019 registered under Section 376 Indian Penal Code and Section 6 of POCSO Act, 2012 at Police Station Sector 31, Chandigarh (Annexure P-1) and all subsequent proceedings arising therefrom in view of the compromise (Annexure P-2).

2. In brief, the facts of the case are that an FIR came to be registered on 09.01.2019 under Sections 376 IPC and Section 6 of POCSO Act at Police Station Sector 31, Chandigarh in which it was stated that prosecutrix-respondent No.2 is residing at House No.1527/10, Deep Complex, Hallomajra, Chandigarh along with her family members and is a student of 10th standard. She had friendship with petitioner herein and they were on visiting terms to each others house. Petitioner used to commit indecent acts with respondent No.2 but she did not disclose anything due to fear. About 2 ½ months back, petitioner came to house of respondent No.2

and suddenly forced himself upon her and when she restrained him from doing so, she was threatened with dire consequences and he committed rape upon her. Thereafter, petitioner started committing rape upon respondent No.2 often. Respondent No.2 started vomiting one day and suspecting that she is pregnant, she did her pregnancy test and came to know that she is pregnant. She brought the entire matter to the knowledge of the counsellor of the school, Madam Maneka. She informed about the occurrence to the Headmaster after conducting her medical check-up, who made a phone call to the police.

3. However, after lodging of the FIR, a compromise (Annexure P-2) was entered into between the petitioner and respondent No.2 whereby she made a statement by way of affidavit that she likes the petitioner and wants to marry him as soon as she turns 18 years of age. She is ready to give statement before the court of law and she has no objection if the FIR lodged by her against the petitioner is quashed. Based on the said compromise, the instant quashing petition was filed.

4. By an order dated 06.11.2019, parties were directed to appear before the Illaqa Magistrate on 05.12.2019 so that their statement could be recorded regarding the genuineness of the compromise. The parties appeared before the Illaqa Magistrate wherein a statement of the complainant was recorded that she did not want to pursue the FIR.

5. In normal circumstances, the Court would not entertain a matter when the non compoundable offences are heinous in nature and against the public. In the instant case, the offence, complained of, is under Section 376 IPC, which is an offence of grave nature. In the eyes of law, the offence of rape is serious and non-compoundable and the Courts should not in ordinary

circumstances interfere and quash the FIR that has been registered. However, there are always exceptions to the normal rules and certain categories of cases, which deserve consideration specially when it is a case of love affair between teenagers and due to fear of the society and pressure from the community one party alleges rape, cases where the accused and the victim are well known to each other and allegation of rape is levelled only because the accused refused to marry, as well as the age, educational maturity and the mental capacity, consequences of the same ought to be kept in mind when inclined to interfere.

6. In the instant case, an FIR came to be lodged in which it was stated that accused had committed rape. However, later on, a compromise has been arrived at between the accused i.e. petitioner herein and the prosecutrix-respondent No.2 whereby they have agreed to solemnize marriage as soon as the prosecutrix attains the age of majority. Furthermore, it is decided by the complainant that the FIR would not be pursued by her and she has no objection in case the same is quashed.

7. In a judgment rendered by the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466**, the Hon'ble Apex Court has laid down certain principles and guidelines which should be kept in mind while quashing of FIRs pertaining to non-compoundable offence. For ready reference paragraphs No.29.2 and 29.5 are reproduced as under :-

“29.2. 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.

29.5. 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 case.”

8. Even in a judgment rendered by the Hon'ble Supreme Court in **Madan Mohan Abbot vs State Of Punjab, 2008 (4) SCC 582**, it has been held that it is advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings. Relevant paragraph of the said judgment is reproduced herein below :-

“5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the

complainant has, on 11th January 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law. We see from the impugned order that the learned Judge has confused a compounding of an offence with the quashing of proceedings. The outer limit of Rs.250/- which has led to the dismissal of the application is an irrelevant factor in the later case. We accordingly allow the appeal and in the peculiar facts of the case, direct that FIR No.155 dated 17th November 2001 P.S. Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed.”

9. Even in the judgment rendered in **Gian Singh vs State Of Punjab & Anr, reported as 2012(10) SCC 303** the basic principle of law as laid down is that where offences are purely private in nature and do not concern public policy, the power to quash proceedings involving non-

compoundable offences on the basis of compromise can be exercised.

10. Therefore, while relying upon the ratios of the aforesaid judgments, this Court is of the view that the compromise which has been entered into for quashing of an offence under Section 376 IPC on the basis of the compromise should be accepted. The complainant in her statement before the Additional Sessions Judge-cum-Judge Special Court, Chandigarh on 07.12.2019 stated that she wants to marry accused Sikander, who has also suffered a similar statement before the JMIC. The compromise has been effected, which is without any pressure or coercion.

11. Consequently, in view of the above, this petition is allowed and FIR No.10 dated 09.01.2019 registered under Section 376 Indian Penal Code and Section 6 of POCSO Act, 2012 at Police Station Sector 31, Chandigarh and all subsequent proceedings arising out of the same qua petitioner are quashed.

(JAISHREE THAKUR)
JUDGE

March 05, 2020
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No