

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

CRM-M-49972 of 2019 (O&M)

DATE OF DECISION: 07.10.2020

Gautam Sharma and Another Petitioners.
Vs.

State of Punjab and Others Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Amit Goyal, Advocate, for the petitioners.
Mr. Ramandeep Sandhu, Sr. DAG, Punjab.
Mr. Sameer Kaushik, Advocate, for
Manish Deswal, Advocate, for respondent Nos.2 to 4.

ALKA SARIN, J (Oral)

Heard through Video Conferencing.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') for quashing of FIR No.91 dated 17.06.2019 (Annexure P-1) under Sections 342, 498-A, 506 of the Indian Penal Code, 1860 and Section 75 of the Juvenile Justice Act, 2015 registered at Police Station Kotwali, Bathinda, District Bathinda and all the consequential proceedings arisen therefrom, in view of the compromise arrived at between the parties.

On 26.11.2019, the following order was passed :

“The petitioners have approached this Court seeking quashing of FIR (Annexure P-1) and all consequential proceedings emanating therefrom on the basis of a compromise having been effected between the parties.

Notice of motion for 17.3.2020.

At this stage, Mr. Manish Deswal, Advocate has today put in appearance on behalf of respondents No.2 to 4 and has filed power of attorney, which is taken on record.

The parties are directed to appear before the Illaqa Magistrate/trial Court on 17.1.2020 for getting their statements recorded qua the factum of compromise.

The Illaqa Magistrate/trial Court is directed to submit its report on or before the next date of hearing as regards authenticity and genuineness of compromise after recording statements of all the affected parties.

The Illaqa Magistrate/Trial Court shall also furnish the following information:-

1. Whether there is any other accused other than the petitioners, arrayed in this petition?

2. Whether there is any other complainant or affected/ aggrieved party other than the respondents, arrayed in the petition?

The statements of the parties have since been recorded and report dated 27.01.2020 has been received from the Chief Judicial Magistrate, Bathinda wherein it has been recorded that as per the statements of the parties, the matter has been voluntarily settled between them and the compromise is genuine.

In the present case the FIR has its genesis in matrimonial dispute between the parties. The marriage of the parties was solemnized on 30.01.2005 and out of the wedlock two children, namely, Khayati Sharma aged 15 years and Khayat Sharma aged 07 years were born. As per the compromise, the custody of both the children has been given to the wife and besides an amount towards alimony/maintenance, a plot has also been given to them towards full and final settlement.

Learned counsel for the petitioner has submitted that a divorce petition under Section 13-B of the Hindu Marriage Act, 1955 has since also been allowed and the marriage has been dissolved between the parties by way of mutual consent.

Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab, 2012 (4) RCR (Crl) 543** has laid down as under:-

56. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia¹⁴, Dharampal¹⁵, Arun Shankar Shukla¹⁶, Ishwar Singh²³, Rumi Dhar (Smt.)²⁸ and Ashok Sadarangani³⁴. The principle propounded in Simrikhia¹⁴ that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal¹⁵, the Court observed the same thing that the inherent powers under [Section 482](#) of the Code cannot be utilized for exercising powers which are expressly barred by [the Code](#). Similar statement of law is made in Arun Shankar Shukla¹⁶. In Ishwar Singh²³, the accused was alleged to have committed an offence punishable under [Section 307, IPC](#) and with reference to [Section 320](#) of the Code, it was held that the offence punishable under [Section 307 IPC](#) was not compoundable offence and there was express bar in [Section 320](#) that no offence shall be compounded if it is not compoundable under [the Code](#). In Rumi Dhar (Smt.)²⁸ although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under [Section 120-B/420/467/468/471](#) of the IPC along with the bank officers who were being prosecuted under [Section 13\(2\)](#) read with [13\(1\)\(d\) of Prevention of Corruption Act](#). The Court refused to quash the charge against the accused by holding

*that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani³⁴ was again a case where the accused persons were charged of having committed offences under [Sections 120-B, 465, 467, 468 and 471, IPC](#) and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in *B.S. Joshi*¹, *Nikhil Merchant*² and *Manoj Sharma*³ and it was held that *B.S. Joshi*¹, and *Nikhil Merchant*² dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in *Ashok Sadarangani*³⁴ was more on the criminal intent than on a civil aspect. The decision in *Ashok Sadarangani*³⁴ supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.*

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 view of the above and in view of the fact that the present case has arisen out of a matrimonial dispute and now that the dispute has been resolved between the parties and in order to impart complete justice to the parties, I deem it appropriate to quash FIR No.91 dated 17.06.2019 (Annexure P-1) under Sections 342, 498-A, 506 of the Indian Penal Code, 1860 and Section 75 of the Juvenile Justice Act, 2015 registered at Police Station Kotwali, Bathinda, District Bathinda and all the consequential proceedings arising therefrom.

Disposed off.

October 07, 2020
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(ALKA SARIN)
JUDGE

NOTE:

Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No