

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-9490 of 2021 (O&M)

Date of decision : 3.3.2021

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Mukesh Kumar

.....Petitioner

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. S.K. Choudhary, Advocate
for the petitioner.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

Petitioner- Mukesh Kumar, an accused in FIR No. 143 dated 24.8.2008, for offences under Sections 376, 420, 120-B IPC and Section 3 (1) (i) & 3 (2) (Va) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) act, 1989 (Amendment 2015), registered at Police Station Division No.1, District Pathankot, has brought the instant petition under Section 482 Cr.P.C. for quashing of the abovesiad FIR alongwith ancillary proceedings arising therefrom, on the basis of compromise dated 11.2.2021 (copy Annexure P-2), stated to have been effected between him and complainant Bibha Mandal @

Bibha Sakar - arrayed as respondent No.2.

Notice of motion.

At this stage, Mr. J.S. Ghuman, DAG, Punjab, has accepted notice on behalf of State-respondent No.1.

Although, Mr. S.K. Arya, Advocate, has appeared on behalf of the complainant – respondent No.2 and admitted the factum of compromise between the petitioner and complainant, but I find that the present petition is doomed for failure for various reasons. Firstly, petitioner – Mukesh Kumar, had filed a similar petitioner earlier bearing CRM-M-40748-2020, which was dismissed by this Court vide order dated 21.12.2020. Inter alia in the order, it was observed that the main reason for seeking quashing of the FIR was that the prosecutrix was a consenting party. However, as informed by the State counsel, on conclusion of the investigation, challan has been filed against the accused. It was further observed that under such circumstances the petitioner had got adequate opportunity of raising all the pleas before the trial Court at the time of consideration on the point of framing of charge or earlier by moving an application for discharge and if the orders passed by the trial Court are unfavourable, then he could challenge those orders by way of filing revision petition etc. No ground was found to quash the FIR as prayed for.

Despite that, the petitioner has again filed the instant petition, which is found to be without any element of merit. Though resolution of criminal dispute between the parties, by way of compromise between them is encouraged, but that is so done in the cases where the offences involved are of personal type, having

element of civil dispute. A compromise in the case of grave and heinous offences are rather discouraged.

Here the petitioner has been booked for heinous crime of rape, dealt with by Section 376 IPC. Though according to the petitioner, complainant was a consenting party, but the result of the investigation carried out by the police is otherwise. During the trial, the petitioner may be able to prove that the complainant was a consenting party in having sexual intercourse with the petitioner. The matter in that regard is already pending in the trial Court at Pathankot. This Court is not to hold a parallel trial, so as to find out whether the complainant was a consenting party, as alleged by the petitioner, or it was otherwise.

In several judgments, rendered by this Court and the Apex Court, allowing of compromise in cases of rape has not been approved. In a Full Bench judgment by this Court, reported as **Kulwinder Singh and others vs. State of Punjab and another 2007 (3) RCR (Criminal) 1052**, while referring to a Full Bench judgment in **Dharambir vs. State of Haryana, 2005 (2) Apex Criminal 424** , while mentioning the categories of offences, where compounding may not be permitted, it was observed that a case involving clear-cut allegations of rape, should also fall in the prohibited category.

The Apex Court in judgment, **Gian Singh vs. State of Punjab and another, 2012 (4) Recent Apex Judgments (R.A.) 549**, has also referred to such observations made by Full Bench of this Court in **Kulwinder Singh's case (Supra)**.

Therefore, compounding of offence under Section 376 IPC, cannot be permitted by way of allowing a petition under Section 482 Cr.P.C.

Therefore, the petition so filed, stands dismissed, accordingly.

3.3.2021
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(H.S. Madaan)
Judge

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