

118

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

CRM-44174-2021 in/and
CRM-M-17309-2021 (O&M)
Date of decision : 22.12.2021

Sukhwinder Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rishabh Gupta, Advocate for the applicant/petitioners.

Mr. Sarabjit S. Cheema, AAG, Punjab.

Mr. Yashasvi Kapila, Advocate for respondent Nos.2 and 3.

VIKAS BAHL, J. (ORAL)

CRM-44174-2021

This is an application filed under Section 482 of Cr.P.C. for preponement of the date of hearing in the main case which is now stated to be listed for 02.06.2022 to an early date.

Learned counsel for the applicant-petitioners has submitted that the present matter has been compromised and the statements of the parties have already been recorded.

Notice in the application.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab,

appears and accepts notice on behalf of the non-applicant/State of Punjab and Mr. Yashasvi Kapila, Advocate appears on behalf of non-applicant/respondent Nos.2 and 3 and have submitted that they have no objection in case the present application is allowed and the date of hearing in the main case is preponed from 02.06.2022 to today itself for final disposal.

In view of the aforesaid facts and no objection from the opposite side, the present application is allowed and the date of hearing in the main case is preponed from 02.06.2022 to today and the same is taken on Board today itself for final disposal.

Main case

This is a petition under Section 482 of Cr.P.C. for quashing of FIR No.103 dated 10.07.2020 registered under Sections 406 and 420 of the Indian Penal Code, 1860 at Police Station Sadar Hoshiapur, District Hoshiarpur (Annexure P-1) and all the subsequent proceedings arising therefrom on the basis of compromise dated 30.12.2020 (Annexure P-2).

On 23.04.2021, a Coordinate Bench of this Court was pleased to pass the following order:-

“The Court has been convened through video conferencing due to Covid-19 pandemic.

Prayer in this petition is for quashing the FIR No.103 dated 10.07.2020 under Sections 406 and 420 IPC registered at Police Station Sadar Hoshiarpur, District Hoshiarpur, Annexure P-1, along with all consequent proceedings arising therefrom, on the basis of compromise deed dated 30.12.2020, Annexure P-2, arrived at between the parties.

Counsel for the petitioners submits that the FIR,

Annexure P-1, has been registered as a result of marital discord and acrimony between the parties, which has now been settled by way of compromise, Annexure P-2. He submits that in terms of the compromise, a petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955, has been instituted in which first motion has been recorded and the second motion is to be recorded before the Family Court on 28.07.2021. Still further, he submits that a sum of Rs.18 lacs has been agreed to be given by petitioner No.1 to complainant/respondent No.2, out of which a sum of Rs.6 lacs has already been paid and the balance amount is to be paid in two installments of Rs.6 lacs each at the time of recording of the statement in pursuance to the order passed in this petition and at the time of recording of second motion in the divorce petition. By referring to the note on page 5 of the paper book, he submits that none of the petitioners have been declared as a Proclaimed Offender. He requests that petitioner No.3 is a resident of Canada and all flights to and from Canada have been suspended for the time being, therefore, her statement be permitted to be recorded by virtual mode.

Notice of motion.

On asking of the Court, Mr. A.S. Gill, Senior DAG, Punjab, who is present through video conferencing, accepts notice on behalf of respondent No.1- State and Mr. Yashasvi Kapila, Advocate has put in appearance on behalf of respondents No.2 and 3 and filed his Power of Attorney. He has admitted the factum of compromise effected between the parties as well as statement made by counsel for the petitioner.

The parties and Investigating Officer are directed to appear before the Illaqa Magistrate/trial Court on 28.07.2021 or any subsequent date within fortnight thereafter, for getting their statements recorded with regard to the compromise. The Illaqa Magistrate/trial Court shall submit the report on or

before the next date of hearing. The report be forwarded to this Court specifying the following:-

- 1. the number of accused arraigned in the FIR and how many have appeared before it and have made statements and whether any accused is absconding/P.O. in the case;*
- 2. the name of the complainant and injured/aggrieved and whether all of them have appeared and made their statements in support of the compromise;*
- 3. the stage of trial/proceedings;*
- 4. if the compromise is genuine, voluntary and out of free will of the parties.*
- 5. whether any other criminal case is pending against the accused.*

Report of Illaqa Magistrate/trial Court be awaited for 13.09.2021.

As petitioner No.3 is residing in Canada, trial Court may record her statement through video conferencing and counsel representing her before the trial court shall identify her.

SD/-(SUVIR SEHGAL)

JUDGE

23.04.2021.”

In pursuance of the abovesaid order, a report has been submitted by the Additional Chief Judicial Magistrate, Hoshiarpur. The relevant portion of the said report is reproduced hereinbelow:-

“5. It is humbly submitted that as per the statement of investigating officer and the statements made by complainant Narinder Kaur, eye witness Gagandeep Singh as well as accused Sukhwinder Kaur, Kulwant Kaur and Sukhbir Sheera, it is submitted that

- i) there are only three accused namely Sukhwinder*

Kaur, Kulwant Kaur and Sukhbir Sheera arrayed as accused in the present FIR and their statements have been record. No accused is declared as proclaimed offender.

ii) the name of complainant is Narinder Kaur and other eye witness is Gagandeep Singh and they have made their statements regarding compromise.

iii) for awaiting challan.

iv) a volunteer and genuine compromise has been arrived at between the parties.

v) as informed by the investigating officer no other criminal case is pending against the accused persons except the present FIR.

6. From the statement of complainant, I am satisfied that a volunteer and genuine compromise has been arrived at between the parties. The report is submitted please, along with statements of parties for further proceedings.

Dated: 28.7.2021

*Sd/- (Rupinder Singh)
Addl. Chief Judicial Magistrate,
Hoshiarpur”*

A perusal of the said report would show that the compromise has been found to be genuine, without any pressure or undue influence. It has been stated that the statements of the complainant as well as the accused have been recorded in the case and both have stated that the matter has been compromised and they have no objection in case the FIR is quashed. It is further stated that the statement of the complainant has been made voluntarily without any fear, coercion or pressure.

Learned counsel for the petitioners has submitted that the petitioners were not declared proclaimed offender in the present case and

there are no other cases pending against the petitioners. Learned counsel for the State, as per instructions has stated that these facts are correct.

Learned counsel for respondent Nos.2 and 3 has again reiterated that the matter has been settled and the said compromise is in the interest of all the persons and would help in bringing out peace and amity between the two parties.

This Court has heard the learned counsel for the parties and has perused the file. After perusing the report submitted by the trial Court, this Court finds that the matter has been amicably settled between the petitioner and the complainant. Since the matter has been settled and the parties have decided to live in peace, this Court feels that in order to secure the ends of justice, the criminal proceedings deserve to be quashed.

As per the Full Bench judgment of this Court in “**Kulwinder Singh and others Vs State of Punjab**”, reported as **2007 (3) RCR (Criminal) 1052**, it is held that 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 is of the opinion that the same is 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 the Apex Court in the case of “**Gian Singh Vs. State of Punjab and another**”, reported as **2012 (4) RCR (Criminal) 543**, had also observed that in order to secure the ends of justice or to prevent the abuse of process of Court, inherent power can be used by this Court to quash

criminal proceedings in which a compromise has been effected. The relevant portion of para 57 of the said judgment is reproduced hereinbelow:-

“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. XXX---XXX”

In view of what has been discussed hereinabove, the petition is allowed and FIR No.103 dated 10.07.2020 registered under Sections 406 and 420 of the Indian Penal Code, 1860 at Police Station Sadar Hoshiapur, District Hoshiarpur (Annexure P-1) and all the subsequent proceedings arising therefrom on the basis of compromise dated 30.12.2020 (Annexure P-2), are ordered to be quashed, qua the petitioners.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

22.12.2021

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No