

CRM-M-24933-2021 (O&M)

THROUGH VIDEO CONFERENCE

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

**CRM-M-24933-2021 (O&M)
Decided on: August 9, 2021.**

Surender

.. Petitioner

VERSUS

State of Haryana and another

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Santosh Bhardwaj, Advocate,
for the petitioner.**

**Mr.Sandeep Singh Jattan, Advocate,
for respondent No.2 – complainant.**

JASGURPREET SINGH PURI, J.

CRM-23417-2021

For the reasons recorded in the misc. application, the same is allowed. Affidavit of the petitioner Annexure P-4 as well as other Annexures P-5 to P-11, are taken on record subject to all just exceptions.

Main Case

The present petition has been filed under Section 482 of the Code of Criminal Procedure, for quashing of FIR No.87 dated 5.6.2020 under Section 24 of Immigration Act and Sections 406 and 420 IPC, registered at Police Station Nigdhu, Distt. Karnal, Haryana, and all the

CRM-M-24933-2021 (O&M)

resultant proceedings arising therefrom on the basis of compromise/settlement which is stated to have been arrived at between the petitioner and respondent No.2 and in support of the same affidavit of respondent No.2 (Annexure P-2) has been attached with the petition.

The present FIR came to be registered on the basis of statement of one Bhupender Singh son of Shri Fateh Singh, resident of village Nigdhu, Sub Tehsil Nigdhu, District Karnal - respondent No.2 stating that he has a passport and is 7th Class pass and in the year 2019, he had a conversation with one Jeevan working as an agent in Karnal for sending the persons to America and he told him that it will cost Rs.30,00,000/- and he will make him jump the wall at America and manage some work for him so that the complainant may earn Rs.2 lacs every month. Thereafter, he gave his consent to agent Jeevan for going to America. On 16.5.2019, Jeevan told him about confirmation of his ticket to America and Jeevan came to his house and took Rs.1,50,000/- from him and on the same day, he again came to his house stating that his ticket has been confirmed from Delhi to Moscow for tonight and the flight itself is on the same day and he took his clothes and articles (luggage) and Jeevan made him sit in the car and they reached Karnal. There aforesaid Jeevan asked him to sit in that car and said that car will take him to Delhi and he told that this car is of his friend whose name is Surender Kumar (petitioner) and he will take him to Delhi. Thereafter, the complainant boarded in the car of Surender Kumar (petitioner) on the saying of Jeevan and Jeevan went back home. When he went to Delhi in Surender's car, he brought him to a hotel in Paharganj area

CRM-M-24933-2021 (O&M)

and kept his belongings in the hotel. Then approximately at 7:00 PM, Surrender Kumar (petitioner) told him that he will have to cross the forest to enter America and therefore, an injection will be given to him so that any snakebite may not harm him in the forest. Then he went to the Doctor according to the saying of the petitioner and doctor took his passport from Surrender and checked the same and gave the complainant an injection on his arm and the doctor did not tell anything to him. Thereafter, Surrender Kumar (petitioner) brought him back to the hotel and after leaving him in the hotel, Surrender told him to have meal and said that he will be back by 10:00 P.M. with his ticket and thereafter when Surrender did not come at 10:00 P.M. and when complainant made calls to him on his mobile number, he told him to wait. Thereafter, he again called the petitioner who told him to get ready and he will be coming soon. Thereafter, the petitioner called again at 1:00 A.M. and said that his departure has been cancelled and he will arrange the ticket within 1-2 days. Thereafter, the complainant stayed at the hotel and after two days Surrender Kumar came to him and kept on coming and going back during intervals and thereafter, on 27.5.2019, when Surrender Kumar came back, he asked him to get ready as he was coming with the ticket and thereafter a taxi was arranged and the complainant reached at Delhi Airport Terminal-III as the petitioner told him that his flight is at 1:00 A.M. Thereafter, the complainant reached Mexico from Delhi. He stayed there for 10 hours and then reached Hawana from Mexico, then Panama from Hawana, and then Panama to Quinto which falls in Central America. When he came out from Quinto Airport, he received a

CRM-M-24933-2021 (O&M)

recording of Surender Kumar on his telephone and name of the Hotel as well and he told him to arrange a taxi from outside to go to Hotel. Thereafter, the complainant went to Hotel of which name, he does not remember. The persons of Hotel did not ask anything neither name nor address and he booked bus ticket for him from Quinto to Turkaan and when he reached Turkaan by bus and was searching for a hotel, a taxi driver came to him and had shown his photo in his mobile phone and also had shown the recording of Surender and he boarded the taxi and reached the home of that taxi driver. When he switched his phone on and talked to Surender and Jeevan resident of Nigdhu, he told that he has reached at an old lady's home at Tulkanpur and that taxi driver left him there. He stayed there at the house of the old lady for two days and persons used to meet him there step by step. Many different kinds of persons met him and he stayed in a hotel at Guwata Mala through the forests of Panama and talked to Jeevan and Jeevan asked him for payment and he made call to his house and his family members gave Rs.7 lacs to Jeevan. Then he reached Mexico at someone's home and Jeevan called him for the payment of the pending amount. Then his family members made payment of Rs.15 lacs. Thereafter on 12.9.2019 approximately at 7/7:30 PM, the local persons made him jump over the wall and after walking 15-20 minutes, police arrested him and he was confined in the jails of America and now the Government of America has sent him back to India and therefore, Surender and Jeevan, according to the complainant, have cheated upon the complainant. In the FIR both, Surender Kumar and Jeevan are accused persons.

CRM-M-24933-2021 (O&M)

Learned counsel for the petitioner has submitted that the present FIR may be quashed on the basis of a compromise which has been arrived at between the petitioner and respondent No.2 – complainant and the complainant has also sworn an affidavit vide Annexure P-2 in this regard by stating that the matter has been compromised between them and therefore, in view of the settled law that no useful purpose will be served by further prosecuting the petitioner, the present FIR may be quashed.

I have heard the learned counsel for the petitioner.

On 6.7.2021, a query was put to the learned counsel for the petitioner as to whether the petitioner is involved in any other case of like nature etc. or not, and it was submitted by her that the petitioner is involved in two more cases of similar nature. This Court had directed the petitioner to file affidavit giving details of nature of accusations levelled in other FIRs along with copies of the FIRs.

In compliance of the aforesaid order, the petitioner has filed an application by attaching affidavit of the petitioner wherein it is stated that the petitioner is also involved in four more cases and copies of other three FIRs have also been attached as Annexures P-9 to P-11. The details of the FIRs as stated by the petitioner himself, in his affidavit, are as under:-

1 FIR No.130 dated 28.05.2020 u/S 10/24 of Emigration Act and Section 420 IPC. P.S. Uchana, Distt. Jind.

2 FIR No.273 dated 30.07.2020 u/S 406, 420, 506 and 120-B IPC and Section 24 of the Emigration Act,

CRM-M-24933-2021 (O&M)

P.S. Civil Lines, Distt. Karnal.

3 *FIR No.115 dated 20.02.2020 u/S 406, 420,
506/34 P.S. Assandh, Distt. Karnal.*

A perusal of the above three FIRs in which also the petitioner is an accused, would show that these FIRs are also of similar nature in which various complaints have been filed by different persons and the *modus operandi* adopted by the petitioner is similar. Further as per the FIRs, the petitioner had been sending different persons to America through different channels and different airlines by illegal methods and all of them were ultimately caught by the Emigration Authorities of different countries and America and they were deported back to India. In the present FIR which is sought to be quashed on the basis of compromise, the *modus operandi* adopted by the petitioner is totally unlawful. The petitioner is not a lawful licensee under any law and sends Indian citizens to America through different countries through forests and by scaling the walls by them by illegal methods and takes lacs of rupees from them and thereafter, when the complainants are deported back, they report the matter to the police and ultimately various FIRs have been lodged against the petitioner.

Respondent No.2 – complainant is also represented by an Advocate and has stated that he has no objection in case the FIR is quashed on the basis of compromise because the matter has been settled. However, it appears that the complainant himself may have conspired with the petitioner and adopted illegal means and had gone to another country from where he was deported back to India.

The law with regard to the quashing of the FIR based upon compromise is now well settled. The Hon'ble Supreme Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Ors. vs The State Of Gujarat and another 2017 (9) SCC 641**, has laid down broad principles which are required to be followed while considering quashing of FIR based upon compromise. The Hon'ble Supreme Court has observed that the High Court preserves inherent powers to prevent an abuse of the process of any court or to secure the ends of justice. In forming an opinion as to whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482 Cr.P.C, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power. The High Court has wide ambit and plenty of powers under Section 482 Cr.P.C. which have to be exercised to secure the ends of justice or to prevent an abuse of the process of any court and also due regard has to be given to the nature and gravity of the offence. In **State of Madhya Pradesh Vs. Laxmi Narain and others, 2019 (5) SC 688**, the Hon'ble Supreme Court again observed that while exercising powers under Section 482 Cr.P.C. quashing of criminal proceedings even in respect of non-compoundable offences or offences which are private in nature, and do not have any serious impact on the society, the High Court is required to consider the antecedents of the accused, conduct of the accused and how he had managed to enter into compromise with the complainant. Apart from the above stated parameters, the public interest and social impact upon the society is also to be considered.

CRM-M-24933-2021 (O&M)

In the present case, the nature of allegations against the petitioner, the *modus operandi* adopted by the petitioner, the adverse social impact and public interest involved as well as the antecedents of the petitioner would dis-entitle the petitioner to invoke the power under Section 482 Cr.P.C. for quashing of FIR based upon compromise. Not only the present FIR which is sought to be quashed but the other 3 FIRs, the copies of which have been attached by the petitioner himself as Annexures P-9 to P-11 would suggest that the petitioner had been habitual in sending persons abroad without any lawful authority and by illegal and unlawful methods to different countries and America by scaling walls and crossing forests and thereafter, the complainants have been duped of lacs of rupees who were ultimately deported back to India. The seriousness and gravity of the offence, its adverse social impact and public interest is largely involved in the present case. FIR cannot be quashed on the basis of compromise in a mechanical manner while exercising the powers under Section 482 Cr.P.C. and the totality of facts and circumstances of each and every case has to be seen.

In view of above, this Court does not deem it fit and proper to invoke the extra ordinary power under Section 482 Cr.P.C. for quashing the FIR in the present case and consequently, the present petition is hereby dismissed being devoid of any merits.

August 9, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No