

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CRM-M-25375-2021
Decided on : 07.07.2021

Nitin Dubey

..... Petitioner

Versus

State of Haryana & ors.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arpandeeep Narula, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Prayer in the instant petition filed under Section 482 Cr.PC is for quashing the FIR No.28 dated 08.05.2021 for the offence under Sections 354-D and 506 IPC and Sections 66(c) and 67 of Information Technology (Amendment) Act, 2008 registered at Police Station Cyber City, Gurugram and all consequential proceedings arising therefrom on the basis of compromise dated 09.06.2021 (Annexure P-2).

It has been urged by learned counsel for the petitioner that in the wake of unconditional written apology by way of a duly sworn in affidavit dated 07.06.2021 (Annexure P-3) tendered by the petitioner with respect to the crime in question, followed by its acceptance by respondent No.2-complainant vide Annexure P-4 dated 22.06.2021, no useful purpose would be served by the continuation of the criminal proceedings against the petitioner. It has further been pleaded that petitioner and respondent No.2, are the affected parties, hence, in the wake of compromise dated 09.06.2021

(Annexure P-2) effected between them, no prejudice would be caused to anyone in case FIR in question is quashed.

Heard and perused the material available on record.

The inherent powers vested in this Court under Section 482 Cr.PC are undoubtedly extensive but they have to be exercised sparingly and with a great deal of caution. Courts draw the power of compounding offences from Section 320 Cr.PC, which enumerates the category of offences that can be compounded. Section 320(9) Cr.PC categorically and explicitly provides that “No offence shall be compounded except as provided by this Section.” Hence, the aforementioned statutory mandate should not be allowed to be breached and diluted except of course in cases having an overwhelming civil character arising out of commercial transactions, matrimonial or family disputes where the parties have amicably resolved their disputes amongst themselves as has been held by the Supreme Court in *State of Madhya Pradesh vs. Laxmi Narayan and others, 2019(2) RCR (Crl.) 255*. While exercising its powers under Section 482 Cr.PC for quashing of a FIR on the basis of a compromise between the parties, this Court must not thus, overlook the fact that the offences were categorized as compoundable and non-compoundable by the legislature with a definite intent.

This Court is very much alive to the fact that FIR registered for offences under Sections 354, 354-A, 354-C and 354-D IPC are being quashed on the basis of compromise by this Court in exercise of its inherent powers under Section 482 Cr.PC. However, a distinction would have to be drawn between those cases and the case in hand. It would be thus, apposite

to reproduce the contents of the FIR as well as the compromise deed dated 09.06.2021 (Annexure P-2) effected between the petitioner and the complainant, which are as under:

First Information Report

*“May 8th, 2021, To the SHO, Cyber Crime Cell, Gurgaon
sub: complaint against Nitin Dubey for stalking, sending abusive material, threatening to throw acid and murder my daughter and family, threatening to upload morphed obscene pictures on the internet. Dear Sir, this is to inform you that a person named Nitin Dubey has been harassing my daughter over email and sending her abusive, pornographic material, impersonating her by creating similar email id's and threatening to throw acid, and is threatening to murder her and the family. I feel threatened for the life and safety of my daughter and my family. We request you to provide my daughter and my family police protection and take immediate and strict action against Nitin Dubey by filing FIR under relevant sections of IPC, IT Act, Crime against women and for impersonation. I am enclosing an official complaint with all the relevant documents for your record including some recent emails, his photograph and some other abusive/obscene material that he has sent through multiple email Ids.”*

Compromise Deed

Nitin Dubey, aged 37 years s/o Sh. Mohan Dubey r/o House No.28, Deshraj Colony, Anangpur Dairy, Faridabad, Haryana present address Royal Residency P.G., Sector 22, Gurugram, Hry. (hereinafter called the petitioner)

And

Aditya Chaudhari s/o Sh. A.K.Chaudhuri r/o C1/2921, Sushant Lok-1, Gurugram, Haryana (hereinafter called respondent No.2)

Whereas the petitioner and respondent No.2's daughter attended a 15 day's CS training in 2010, during which the petitioner somehow managed to get the email id of the respondent's daughter and started sending her random mails. After the training, the petitioner has never met nor had any telephonic conversation with respondent's No.2's daughter. After sometime, the petitioner started harassing the respondent's No.2's daughter by way of sending her abusive and pornographic material through various emails, impersonating her by creating similar email id's. He also threatened to throw acid on her and also threatened to murder her and her family in cold blood.

Whereas as soon as this came to the knowledge of respondent No.2, a complaint was filed before the police and an FIR bearing No.28 dated 08.05.2021 under Sections 354-D, 506 IPC and 66(c), 67 of IT Act was registered at Police Station Cyber Crime, Gurugram against the petitioner.

Whereas now after the petitioner has voluntarily, without any pressure and undue influence accepted his guilt and tendered an apology by way of an affidavit/undertaking dated 07.06.2021, hence respondent No.2 has signed to this compromise on the following terms and conditions:

- 1. That respondent No.2 lodged a complaint, which was converted into FIR bearing No.28 dated 08.05.2021 (Annexure P-1) under Sections 354-D, 506 IPC and 66 (c), 67 of IT Act, registered at Police Station Cyber Crime, Gurugram against the petitioner and now after the petitioner has voluntarily, without any pressure and undue influence accepted his guilt and tendered an apology by way of an affidavit/undertaking hence, both the parties have agreed to this deed.*
- 2. That the petitioner is an accused in the FIR No.28/2021 u/s 354-D, 506 IPC and 66(c), 67 of IT Act at the PS*

Cyber Cell, DLF, Gurgaon and was arrested on 14.05.2021. He was remanded to Judicial Custody for 14 days vide orders dated 15.05.2021 and bail has been granted by the orders of the Chief Judicial Magistrate, Gurgaon vide order dated 02.06.2021.

3. *That respondent No.2 had got the FIR registered against the petitioner and after the petitioner's affidavit / undertaking of acknowledgment of guilt and apology, the petitioner has requested respondent No.2 to not pursue with the complaint/FIR.*
4. *That the petitioner admits that the contents of the complaint and the FIR are true and correct.*
5. *That the petitioner is sorry and has apologized for the obscene and abusive emails and threats(of cold blooded murder, throwing acid, killing family and morphing photographs) that he has sent to respondent's daughter, without any provocation or cause.*
6. *That the petitioner has sincerely apologized to respondent No.2's daughter, respondent No.2 and his entire family for these one-sided emails. The petitioner is extremely sorry for harassing the girl and her family.*
7. *That petitioner, undertakes and affirms that he shall never repeat this shameful behaviour and shall not do any such thing in the future.*
8. *That the petitioner, also promises and undertakes that he shall not approach respondent No.2's daughter or her family in future.*
9. *That the petitioner shall always be bound by his aforesaid affidavit/undertaking.*
10. *That the petitioner understands the consequences of breach of his aforesaid undertaking.*
11. *That both the parties have signed this deed without any kind of pressure, coercion and undue influence and have*

signed the same after reading and understanding the language.”

A bare reading of the FIR not only reflects the criminal bent of mind of the petitioner but the compromise deed reveals that the petitioner has admitted to the commission of the crime. No doubt, respondent No.2 i.e. complainant has shown his magnanimity by accepting the unqualified apology tendered by the petitioner, who has admitted his guilt to the allegations levelled against him, however, this Court would be most unwilling to act upon such a compromise, if in the first place it may be termed as one. Moreover, if such like compromises are given effect to and FIRs/criminal proceedings quashed as a result thereof, it would set a dangerous precedent and render the entire justice system totally redundant. In a criminal case, the State steps into the shoes of the victim and prosecutes the accused to protect and safeguard the interests of the society at large. Hence, the ability of a party to enter into a compromise with the victim/complainant should not detract the Court from its role of being an effective instrument in dispensing justice. In cases such as the one in hand where the accused has admitted to the commission of a crime under Sections 354-D, 506 IPC and 66(c), 67 of IT Act, approving such compromise deeds would lead to a situation where the Court would be seen to be actively acquiescing to the commission of the crime. Moreover, this Court has no hesitation in concluding that the crime committed by the petitioner cannot be said to be private in nature by any stretch of imagination, as has been vehemently urged by the learned counsel but is a crime against the society at large and reflects his moral depravity.

Resultantly, this Court finds no ground to invoke its inherent jurisdiction under Section 482 Cr.PC to quash the FIR in question on the basis of compromise dated 07.06.2021. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

07.07.2021
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Whether speaking/reasoned:	Yes
Whether reportable :	Yes