

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27894-2021 (O&M)

Date of decision: 20.07.2021

Davinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vikas Sonak, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

The petitioner has prayed for quashing of FIR No.104 dated 02.09.2019 for the offences punishable under Sections 379, 295-A, 323, 506 of the Indian Penal Code ('IPC' for short), registered at Police Station Sadar Kotkapura, District Faridkot and all the subsequent proceedings arising therefrom, on the basis of compromise effected between the parties.

Learned counsel for the petitioner submits that after registration of the FIR, the matter has been amicably settled between the petitioner and the complainant and in view of the same, the police has submitted a cancellation report before the Illaqa Magistrate and notice was issued to the complainant. In pursuance of the same, the complainant has appeared and recorded the statement that he has no objection if the cancellation report is accepted, however, the Judicial Magistrate 1st Class, Faridkot, vide order

dated 29.04.2021, has observed as under: -

“In pursuance of notice, complainant Gurmail Singh appeared and suffered a statement that he is complainant of the present case and he is agreed with the police proceedings and does not want to proceed further with the present case and he has no objection, if cancellation report be accepted. Heard. File perused. Perusal of the file reveals that present FIR has been registered at the instance of complainant Gurmail Singh, on the allegations that on 29.08.2019 complainant along-with Sukhvir Singh and Beant Singh had gone to canal for evening walk and at about 07.00 P.M, he (complainant) spotted that accused Davinder Singh along-with three unidentified persons was committing theft of his (complainant) personal motor make Lubi 10 HP and two pipes and flex and when complainant stopped them from doing so, accused Davinder Singh dragged the complainant from his beard and has also uproot beard hair and gave him killing threats by showing ‘kapa’. Present cancellation has been presented on the basis of compromise and complainant has agreed with the police proceedings and he has no objection if cancellation report be accepted. To my mind, the offence under Section 295-A IPC is non compoundable and as such no cancellation can be moved on the basis of compromise between the parties. Therefore, the matter in hand needs probe and as such the present cancellation report is sent to the concerned SHO for further investigation and concerned

SHO is directed to submit his report after further investigation. Judicial papers be separated and be consigned to the record room. Remaining papers be sent to the concerned quarter within a week.”

Learned counsel for the petitioner further submits that the procedure adopted by the trial Court is not correct.

Notice of motion.

On asking of the Court, Mr. Joginder Pal Ratra, DAG, Punjab accepts notice on behalf of respondent No.1-State while Mr. A.S. Sekhon, Advocate has appeared on behalf of respondent No.2-complainant.

Learned State counsel, assisted by learned counsel for respondent No.2-complainant, could not dispute the fact that the matter has been amicably settled between the parties.

Learned counsel for the complainant has reiterated the version given in the FIR, by filing affidavit dated 09.07.2021, which is attached as Annexure P-2 that the matter has been compromised with the intervention of respectables and since both, the petitioner and the complainant, are residing peacefully and happily in the same village, compromise was effected to maintain cordial atmosphere in the locality. It is further stated by respondent No.2-complainant in the affidavit that he has no objection if the FIR is quashed in the interest of justice.

As per the Full Bench judgment of this Court in **Kulwinder Singh and others Vs. State of Punjab, 2007 (3) RCR (Criminal) 1052**, it is held that the 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 feel that the same was 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, 2012 (4) RCR (Criminal) 543**, has held as under:-

“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 predominatingly 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.”

Since the parties have arrived at a compromise and have decided to live in peace, no useful purpose would be served in allowing the criminal proceedings to continue.

In view of what has been discussed hereinabove, present petition is allowed and FIR No.104 dated 02.09.2019 under Sections 379, 295-A, 323, 506 IPC, registered at Police Station Sadar Kotkapura, District Faridkot and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

[ARVIND SINGH SANGWAN]
JUDGE

20.07.2021
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No