

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

CRM-M-39305 of 2020.

Decided on:- February 26, 2021.

Abdul Hameed @ Gullu.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Imran Farooqi, Advocate
for the petitioner.

Mr. Avtar Singh Sandhu, Addl. A.G., Punjab.

Mr. Vishal Singh Chauhan, Advocate
for respondent No.2.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of FIR No.95 dated 27.08.2020 under Sections 342, 323, 376/511 IPC registered at Police Station City-2, Malerkotla, District Sangrur (Annexure P-1) and all subsequent proceedings arising therefrom on the basis of compromise by way of affidavit dated 02.09.2020 (Annexure P-2).

The aforesaid FIR was registered against the petitioner on the statement of respondent No.2-complainant Gitar Kaur Boriar. As per the FIR, the petitioner along with other co-accused, namely, Shehbaz and Rashid snatched the handbag of the complainant, which contained her laptop, passport, mobile phone i.e. i-phone-7 and 4000 pounds cash etc. and put the complainant in their illegal custody. On 12.05.2020 at night, the petitioner opened the door of the room on the pretext of giving food to the complainant,

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where she was confined and assaulted her sexually and attempted to commit rape upon her. She remained in the illegal custody of the accused persons for about two days.

Since the FIR is sought to be quashed for offence under Section 376/511 IPC as well, this Court vide order dated 26.11.2020 had directed the parties to appear before the Illaqa Magistrate/trial Court to get their respective statements recorded with regard to compromise and the Court was directed to send its report qua genuineness of the compromise.

Pursuant to the aforesaid order, the parties had appeared before learned Sub Divisional Judicial Magistrate, Malerkotla and got their statements recorded on 22.12.2020. On the basis of the statements so recorded by the parties, learned Magistrate has submitted the report dated 22.12.2020 to the effect that the compromise is genuine, voluntarily and without any coercion and undue influence in view of the statement of complainant and accused.

Respondent No.2-complainant, namely, Gitar Kaur Boriar has made her statement with regard to compromise before learned Magistrate on 22.12.2020. The same is reproduced as under:-

“That FIR No.95 dated 27.08.2020 under Sections 342, 323, 376, 511 IPC was registered on the basis of my statement against accused Abdul Hameed @ Gullu at police station City 2, Malerkotla. The matter in dispute qua FIR referred above has been compromised between me and accused with the intervention of respectable, relatives. The compromise is genuine, voluntary and without any coercion and undue influence. Copy of my passport is Mark B. In view of the compromise, I have no

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objection if the present FIR is quashed and the quashing petition filed before Hon'ble High Court be accepted."

Learned counsel for the petitioner has submitted that there is no allegation against the petitioner that he committed rape upon the complainant. At the most, the allegation is an attempt to commit rape and, therefore, there is no impediment for this Court to quash the FIR on the basis of compromise as there is no allegation of commission of rape. Further, the matter has been compromised and the respondent No.2-complainant has not only furnished her affidavit, but she has also made her statement in support of the compromise before learned Sub Divisional Judicial Magistrate, Malerkotla. He has referred the affidavit dated 02.09.2020 (Annexure P-2) furnished by respondent No.2-complainant, the contents of which read as under:

- "1. That I have registered one FIR bearing No.0095 dated 27.07.2020 under section 342/323/376/511 IPC, PS City-2, Malerkotla against Mohd. Abdul Hameed alias Gullu son of Faquir Mohd., Mohd. Shahbaz son of Mohd. Abdul Hameed alias Gullu and Mohd. Rashid son of Mohd. Abdul Hameed alias Gullu resident of Rao Wala, Saroud Road, Malerkotla, Distt. Sangrur in lieu of misunderstanding. Now the respectable person compromised the matter between us. Now we have settled our all the misunderstandings.*
- 2. I state on oath that now the matter has been compromised between us and as per compromise, I want to quash my aforesaid FIR and I am ready to give my statement to quash this FIR. I do not want to take any action against Mohd. Abdul Hameed alias Gullu etc. if my statement requires in court to quash this FIR then I will be bound to*

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give my statement in the court. If any reason the petition requires to be filed in the Hon'ble Punjab & Haryana High Court then I am ready to file the petition. After cancelling the aforesaid FIR if will not take any action against Mohd. Abdul Hameed alias Gull etc. we will reside peacefully in the future and we will not take any action against each others. We cleared our all the accounts and nothing is due towards each other.

3. *I state on oath that I have executed this compromise with our own sweet will.*
4. *I state on oath that I have executed this compromised without any fear and pressure.”*

In support of his contention, learned counsel for the petitioner has referred to the judgment dated 10.01.2018 in **CRM-M-46090 of 2017** titled as ***Kamaljit Singh @ Soni Versus Union Territory Chandigarh and another*** and the judgment dated 28.01.2020 passed in **CRM-M-22454 of 2019** titled as ***Harpal Singh and others Versus State of Punjab and another***, wherein the FIRs were quashed by this Court for the same offences on the basis of compromise.

Learned State counsel as well as learned counsel for respondent No.2 have not disputed the factum of compromise between the parties.

I have heard learned counsel for the parties.

In view of the above, continuation of the proceedings before the trial Court in the instant FIR qua the petitioner shall be an abuse of the process of law.

Thus, following the principles laid down by the Full Bench judgment of this Court in ***Kulwinder Singh and others Versus State of***

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Punjab and another 2007 (3) RCR (Criminal) 1052 and approved by the Hon'ble Supreme Court in ***Gian Singh Versus State of Punjab and others (2012) 10 SCC 303***, the present petition is allowed and the of FIR No.95 dated 27.08.2020 under Sections 342, 323, 376/511 IPC registered at Police Station City-2, Malerkotla, District Sangrur (Annexure P-1) and all consequential proceedings arising therefrom are quashed qua the petitioner on the basis of compromise by way of affidavit dated 02.09.2020 (Annexure P-2), subject to payment of costs of Rs.10,000/- to be deposited by the petitioner with the Bar Association of this Court within a period of one month from today.

February 26, 2021
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No