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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6752-2022

Date of Decision: February 18, 2022

Jitender @ Jitu and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Jitender Nara, Advocate
for the petitioners.

.....

RAJESH BHARDWAJ, J.

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.82, dated 14.04.2021, under Sections 376-D, 506, 34 IPC, Section 6 of the POCSO Act, 2012 and Section 67-A of I.T.Act, 2008, registered at Police Station Women, Jhajjar, District Jhajjar, on the basis of compromise, dated 22.12.2021.

As per factual matrix of the case, the FIR in question was lodged by the prosecutrix daughter of Mehtab alleging therein that her date of birth is 02.03.2003 and she was student of 12th Class. On 25th to 30th of December, 2020, she went to the plot for dumping the dung. Jitender @ Jitu, who was resident of their village, asked her to help him in lifting the green fodder. He took her to the fields of Ramesh and after reaching there Jitu caught hold her forcibly and placed his hand on her mouth. In the meantime, Kapil @ Jitender, Monu and Yogesh @ Vikas @ Mattru also came there. Monu took out a pistol and pointed it on her head and threatened

her to be killed. Yogesh started making the video with his mobile and Jitu committed rape upon her. Thereafter Monu, Kapil and Yogesh had also committed rape upon her turn wise. They threatened her to be killed while leaving the place and viral the video in case she disclosed anything about the incident. She disclosed the entire incident to her family members. Request was made to take legal action against the culprits.

Counsel for the petitioner submits that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. but she has supported the case of the prosecution under the pressure of the police and the villagers. It is also submitted that the prosecutrix is marginally lower than 18 years. He submits that the parties are from the same village and with the intervention of the elders, the matter is amicably settled and is finally compromised without any fear, pressure or coercion. He has submitted that as the parties have settled the matter amicably, the prosecution of the petitioners is totally an abuse of the process of the Court and the same deserves to be quashed. He has relied upon a judgment of this Court passed in CRM-M-31825-2017 **Deepak vs State of Haryana and another**, decided on 19.01.2018 and also the judgment rendered by the Hon'ble Apex Court in **Narinder Singh and others vs State of Punjab and another** 2014(6) SCC 466.

Heard.

Evidently the offence involved is heinous in nature. There are specific allegations against the petitioners. The judgments relied upon by learned counsel for the petitioners are totally distinguishable on the facts and circumstances of the present case.

The veracity of the allegations and the counter allegations can

be evaluated by the trial Court only on the basis of the evidence to be produced before it by the respective parties. I am supported by the judgment of Hon'ble Apex Court in State of Odisha vs Pratima Mohanty etc. Crl.Appeal Nos.1455-1456 of 2021, decided on 11.12.2021 wherein the Hon'ble Supreme Court has held as under:-

“6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the Court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

Hon'ble Supreme Court in Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303 further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335. Para 61 of the judgment reads as under:-

“61. 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 pre-dominantly civil flavour stand on a 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, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Weighing the facts and circumstances of the present case on the parameters laid down by the Hon'ble Apex Court in Gian Singh's case (supra), the present case fails to qualify the parameters laid down by the Hon'ble Apex Court. Thus, this Court is not inclined to exercise the jurisdiction under Section 482 Cr.P.C. in favour of the petitioners. The judicial precedents relied upon by learned counsel for the petitioners are distinguishable.

Dismissed.

The petitioners are at liberty to avail their remedy as available to them under the law.

February 18, 2022
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(RAJESH BHARDWAJ)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No