

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5116-2022
Date of Decision: 28.04.2022

(I)

Om Parkash

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CRM-M-5133-2022

(II)

Om Parkash and another

....Petitioner(s)

Versus

State of Haryana and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Santosh Bhardwaj, Advocate, for the petitioner(s).

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana.

JASGURPREET SINGH PURI, J.

Both the petitions are taken up together for final disposal since one of the petitioner namely Om Parkash is petitioner in both the cases and rather it will be necessary to take up both these cases together for final disposal in view of the peculiar facts and circumstances.

Both these petitions have been filed under Section 482 of the Code of Criminal Procedure for quashing of the FIRs based upon compromise between the parties.

The facts of both the cases are as follows:

CRM-M-5116-2022

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the FIR No.116 dated 28.05.2020, under Sections 420, 506 IPC and Section 10/24 of Emigration Act, 1983, registered at Police Station Garhi, District Jind, Haryana and all other consequential proceedings arising therefrom, based upon compromise between the parties.

The present FIR was lodged on the basis of complaint made by one Balwan-respondent No.4 by alleging that his brother namely Ram Roop who is respondent No.3 told him that he is sending his son Sachin who is respondent No.2 to America and for that purpose he had made a settlement of Rs. 12,00,000/- through one agent namely Om Parkash **(Petitioner)**. On 05.05.2019 Ram Roop sent his son Sachin via flight at 2.30 A.M from Indira Gandhi International Airport, where a passport and ticket to Ecuador was given to him by a person and then he was informed that Sachin got down at Amritsar Airport on 19.05.2020 and his treatment of Covid-19 is going. Ram Roop told him that Sachin was first sent to Sau Paulo, then to Addis Ababa and then to Lima and then it was changed and he does not remember the name of the place where he went and thereafter, he reached Ecuador Airport directly where he met a lady who showed him a photograph of Sachin and took Sachin alongwith her in her car and got him travelled to Ecuador. Then she made him sit in a bus and she left in her car after telling Sachin to go from here. After that a man of agent met Sachin and he got crossed Colombia from Ecuador. Thereafter, the man of the aforesaid agent took Sachin to Turbo City where another person met him and he snatched

the passport of Sachin. Thereafter, he entered the USA Border where he was caught by the soldiers within 5 minutes and they took him to the police where he was kept for two days. Thereafter, Sachin was taken to a camp at Calexico City where he stayed for six days and thereafter, he was shifted to Ohlo City where he remained for five months and then he was deported to New York where he stayed for one month. Thereafter, Sachin stayed for 7 days at Alexandria Airport and then he was transferred to Louisiana from where he was ultimately deported to Amritsar Airport on 19.05.2020. The petitioner Om Parkash had pressurized him to give more money other than Rs. 12 Lakhs and he also tried to threaten to kill the family of his brother.

CRM-M-5133-2022

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the FIR No.310 dated 28.05.2020, under Sections 406, 420 IPC and Section 124 of Emigration Act, registered at Police Station Assandh, District Karnal (Haryana) and all other consequential proceedings arising therefrom, based upon compromise between the parties.

The present FIR was lodged on the basis of complaint made by one Kapil-respondent No.2 by alleging that he went to USA on 06.03.2019 and his passport was made by an agent from Chandigarh. He had given Rs. 12 Lakhs to his friend Janka who is resident of Pehowa. Thereafter, Janka gave to agent Akash and Janka also went to USA with him as he was working in USA only. When they were trying to go to California in USA they were caught by the border police and sent to jail and then they came back to Amritsar from USA on 19.05.2020. During that time they did not meet any family member and they did not even remember the phone

number of agent. When he went from India to USA, then the flight was halted at Dispak Country and after that the flight stopped at Sao Paulo Country and after that the flight stopped at Argentina Country and from that place the flight stopped at Lima Country and he landed in Lima. There he met an agent namely Max and the agent took his photo and made him sit in the bus to Columbia from Lima and where he was made to sit in a boat from Columbia and he reached Punama. About 70-80 boys walked on foot for 8 days and reached Punama Army Camp. The Army man left them at Austria Border and after that they went to the next country namely Nicaragua and when they reached near Pundaras, then they went to Guatemala country from Pundaras through bus and from there they reached Mexico through bus. After that the agent made them cross border from Tijuana City in Mexico and they went approximately 18-20 KM, inside from Mexico/USA Border. The agent took their passports and after that they were caught in California and were kept in jail. They took approximately one month to reach India from USA. The agents in India had cheated them and they gave Rs. 12 Lakhs to agent Janka.

Arguments raised by the learned counsel for the petitioners.

Learned counsel for the petitioners in both the cases has submitted that the FIRs were stereo type FIRs and in fact the petitioners are working in one company namely Aurick Enterprises at Panipat which has got certificate of professional standards of the International Air Transport Association and the petitioners have been falsely implicated. She further submitted that even otherwise also the matter has been compromised between the parties and has referred to Annexure P-2 and P-3 in CRM-M-5116-2022 to show that now a compromise has been effected between the

victim/complainant and with the representative of the petitioner namely Jagdish Chander and, therefore, no useful purpose will be served in case the further prosecution is carried on once the matter stands compromised.

Similarly, in the CRM-M-5133-2022, she has referred to Annexure P-2 and has stated that the compromise has been entered into between the complainant- Kapil and the present petitioner and, therefore, no useful purpose will be served in case the further prosecution is carried on once the matter stands compromised.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana on instructions from ASI Ish Kumar who is the I.O in CRM-M-5116-2022 has submitted that an FIR cannot be quashed based upon compromise in a mechanical and casual manner. He further submitted that the allegations which are contained in the FIR ex facie show that such a serious offence has been committed by the petitioners. The money was taken from the complainants/victims for sending them abroad by illegal methods and a bare perusal of both the FIRs would show that the persons who were sent abroad had to pass through many countries and they were even sent to jail at some places and thereafter ultimately they have been deported. He further submitted that in view of the seriousness of the offences, the FIR cannot be quashed at the threshold merely on the basis of compromise. He further submitted that it is not an isolated case where the petitioners are accused of such an offence. The learned Deputy Advocate General supplied a list of 19 cases in which the petitioner Om Parkash is involved and all the cases are of similar nature. Although in one of the cases the FIR has been quashed but the remaining cases are pending. The list supplied by the learned Deputy Advocate General, Haryana is reproduced as

under:-

Sr.No.	FIR No.	Dated	U/s	Name of Police Station	Remarks
1.	158	05.06.20	420 IPC, 10/24 Emigration Act	Safidon	Quashed by High Court
2.	477	28.05.20	406, 420, 34 IPC, 10/24/25 Emigration Act, 12 Passport Act	City Kurukshetra	Pending trial
3.	297	04.06.20	406, 420, 34 IPC, 10/24/25 Emigration Act, 12 Passport Act	Pehowa	Pending trial
4.	310	28.05.20	420 IPC, 24 Emigration Act	Assandh	Pending trial and fixed on 06.06.2022
5.	311	29.05.20	420 IPC, 24 Emigration Act	Assandh	Pending trial and fixed on 06.06.2022
6.	327	05.06.20	420 IPC, 24 Emigration Act	Assandh	Pending trial and fixed on 11.07.22
7.	231	28.05.20	370. 406. 420 IPC, 24 Emigration Act	Gharunda	Pending trial and fixed on 17.05.2022
8.	179	28.05.20	406, 420, 370, 384 IPC, 24 Emigration Act	Indri	Pending trial and fixed on
9.	147	05.06.20	406, 420, 370 IPC, 24 Emigration Act	Nissing	Pending trial and fixed on 04.05.2022
10.	197	13.07.20	420, 406, 506, 370 IPC, 24 Emigration Act	Nissing	Pending trial and fixed on 17.05.2022
11.	141	28.05.20	406, 420, 370 IPC, 24 Emigration Act	Nissing	Pending trial and fixed on 05.05.2022
12	318	14.07.20	406, 420, IPC, 24 Emigration Act	Gharaunda	Pending trial and fixed on 18.04.2022

13.	148	09.06.20	370, 384, 406, 420, 506 IPC, 24 Emigration Act	Israna	Pending trial and fixed on 06.07.2022
14.	146	05.06.20	406, 420, 120-B IPC	Baroda	Pending trial and fixed on 28.04.2022
15.	297	01.08.20	406, 420, 370, 384 IPC, 24 Emigration Act	Madlauda	Pending trial and fixed on 09.05.2022
16.	227	26.06.20	406, 420, IPC, 24 Emigration Act	CL Karnal	Pending trial and fixed on 28.04.2022
17.	368	21.12.19	406, 420 IPC	Israna	Pending trial
18.	371	24.12.19	406, 420 IPC	Israna	Pending trial
19.	516	28.07.20	406, 420, 506 IPC, 24 Emigration Act	Sadar Karnal	Pending trial and fixed on 03.05.2022

Learned counsel for the petitioners at this stage has submitted while referring to para No.14 of CRM-M-5116-2022 that there are approximately 18 FIRs of the same nature against the petitioner (Om Parkash) at different police stations and he has been granted bail in 11 different FIRs. Apart from the same, the compromise has been effected in 5 FIRs. She further submitted that therefore the present FIR is also deserves to be quashed since the matter has been compromised between the parties.

I have heard the learned counsel for the parties.

It is a case where the allegations against the petitioners are that the petitioners as agents have taken lakhs of rupees from the complainants/victims for sending them abroad. However, a perusal of both the FIRs would show that the manner in which the petitioners had sent the persons abroad is totally by way of illegal methods. The persons who were

sent abroad were made to travel from larger number of countries to reach USA where there were jailed and ultimately deported back to India. It is not a case that the petitioners are having any licence to work or that they have acted in a bona fide manner as the authorised licence holders under any law but it is a case where the petitioners had sent persons abroad in a totally illegal manner. The petitioner Om Parkash is facing 19 more FIRs of similar nature. The question that would arise for consideration would be as to whether such kind of FIRs can be quashed based upon compromise.

The law with regard to quashing based upon compromise is well settled. The Hon'ble Supreme Court in "***Gian Singh Vs. State of Punjab and another***", 2012(4) RCR (Criminal) 543, "***State of Madhya Pradesh Vs. Laxmi Narayan***", (SC) 2019(196) AIR 1 and Full Bench judgment of this Court in "***Kulwinder Singh Vs. State of Punjab***", 2007(3) RCR (Criminal) 1052 held it is only in order to secure the end of justice or when there is an abuse of the process of law that the FIR can be quashed based upon compromise. In cases where there are financial dispute between the parties or where there are matrimonial disputes or in such like matters of private offences etc. the Court can always exercise its extra ordinary power under Section 482 of the Code of Criminal Procedure for quashing of the FIR in order to secure the end of justice. However, in such like cases where the gravity and magnitude of the cases is so large that the petitioner who has come to the Court for quashing of the FIR is involved in number of other similar cases cannot be granted such a benefit since apparently on the face of it the offence is affecting large number of people in the society. This Court is of the view that rather quashing of the FIR in such like cases based upon compromise would not be in the interest of justice.

This Court does not find any ground for invoking its extra ordinary power under Section 482 of the Code of Criminal Procedure for quashing of the FIRs based upon compromise.

Therefore, both the petitions are dismissed with costs of Rs. 10,000/- each which shall be deposited by the petitioners within a period of three months in the Poor Patient Welfare Fund, PGI, Chandigarh.

28.04.2022
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No