

232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.4339-2019 (O&M)

Date of decision : 21.12.2022

Jaswinder Kaur

..... Petitioner

versus

State of Punjab & anr.

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashok Paul Batra, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

Mr. Shivender Sharma, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

By way of present petition, the petitioner is seeking quashing of FIR No.0328 dated 27.09.2017, registered for the offence punishable under Section 379 IPC at Police Station Zirakpur, District SAS Nagar, Mohali, on the basis of compromise dated 22.01.2019 (Annexure P-3).

On 30.01.2019, the following order was passed:-

“This is a petition for quashing FIR No. 328 dated 27.09.2017 registered at Police Station Zirakpur, District SAS Nagar Mohali, for the offence punishable under Section 379 IPC on the basis of compromise arrived at between the parties and all the consequential proceedings arising therefrom.

Notice of motion.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab, who is present in the Court, accepts notice on behalf of the State.

Mr. Rajinder Kantiwal, Advocate, who is present in the Court, accepts notice on behalf of respondent No.2.

List on 27.03.2019.

Meanwhile, the parties may appear before learned Illaqa Magistrate Dera Bassi on 11.02.2019 for recording of their statements regarding compromise and after recording the same, learned Illaqa Magistrate is requested to send the report regarding the genuineness of compromise.”

Pursuant to the aforesaid order, report from Judicial Magistrate 1st Class, Derabassi dated 11.04.2019 has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

“XX XX XX

“From the perusal of above statements, it is seen that the complainant and accused, with the intervention of the respectables, have compromised the matter with each other. It is pertinent to mention here that the FIR was registered against two unknown persons, out of them only one accused Jaswinder Kaur was arrested by the police. Now, only Jaswinder Kaur accused and complainant with their own free will and without any threat or coercion have got recorded their statements in the Court. The original compromise affidavit is placed before the Hon'ble Punjab & Haryana High Court, Chandigarh and photocopy of same is Mark CX and they also placed on record photocopies of their Adhaar Cards. Therefore, I am satisfied that the compromise between complainant Gurkiran Singh and accused Jaswinder Kaur is genuine, voluntary and without any undue pressure or threat from anyone”.

The aforesaid report reveals that apart from the accused-petitioner, there are 2 more unknown accused persons. However, the compromise has only been effected with accused-petitioner.

Mr. Shivender Sharma, Advocate appears for respondent No.2 and admits the fact of parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto

against the petitioner are quashed.

Similarly learned State counsel has stated no objection in case the FIR is quashed based upon the compromise.

I have heard learned counsel for the parties and have carefully gone through the records of the case.

After considering judgment rendered by the Apex Court in ***Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688, Kulwinder Singh & others Vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052 and Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of 2012 decided on 29th of September, 2021)***, the proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

- (a) *Power u/s 482 Cr.P.C. vested with this Court is not affected by Section 320 of the Code.*
- (b) *However, wider the power greater the caution.*
- (c) *The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.*
- (d) *The said power is not to be exercised in the prosecutions involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.*
- (e) *Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High*

Court would not refuse to quash FIR under Section 307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.

- (f) Such exercise at the hands of High Court would be permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter is still under investigation.*
- (g) While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.*

Thus, keeping in view the aforesaid facts and circumstances, this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested u/s 482 Cr.P.C. to quash the FIR as :-

- (i) The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra).*
- (ii) The offences are of private nature.*
- (iii) The parties have compromised.*
- (iv) As per the report received the compromise is said to be voluntary in its nature.*
- (v) Complainant/victim has entered into compromise on his own volition.*

Since the parties are *ad idem* that the compromise/settlement has to be read strictly *inter se* between the parties to the present petition and the complainant wants to pursue prosecution of rest of accused and it is only accused-petitioner who has approached this Court by way of present petition, the present petition is being entertained and allowed qua him only.

The question raised by State counsel as to whether the FIR can be quashed in part or not already stands answered by Apex Court in '**Lovely Salhotra and another vs. State (NCT of Delhi)**' reported as **(2018) 12 SCC 391**, wherein it was observed as under:-

“xx xx xx

We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants – herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants - herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 – herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie.”

Consequently, the petition is allowed. FIR No.0328 dated 27.09.2017, registered for the offence punishable under Section 379 IPC at Police Station Zirakpur, District SAS Nagar, Mohali and all proceedings arising therefrom, are, hereby, quashed qua the petitioner.

21.12.2022

Pooja sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable :

No