

**119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-8123-2022

Date of decision : 09.03.2022

Deepak Kumar

..... Petitioner

versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. R.S. Mamli, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Petitioner has approached this Court for quashing the FIR No.0091 dated 27.01.2018, under Section 365 of Indian Penal Code, 1860 (Sections 363 & 366-A IPC added subsequently), registered at Police Station Model Town, District Panipat, along with consequential proceedings arising therefrom, on the basis of compromise dated 12.02.2022 (Annexure P-6) and further to quash the judgment and order dated 26.08.2019 and 28.08.2019 (Annexure P-3).

As per the facts of the case, the FIR in question was lodged by mother of the victim. It was alleged that she has three daughters and two sons. Her daughter i.e. victim (name concealed) on 27.01.2018, went away from home without informing anyone. Her age was 15 years. It was apprehended that victim (daughter) had gone with Deepak. Request was made to search and take legal action against the culprit. The investigation

commenced and on completion of the same, learned trial Court took cognizance of the offence. On conclusion of the trial, the Principal Magistrate and Members, Juvenile Justice Board, Panipat found the charges proved against the petitioner for the offences under Sections 363 and 366-A IPC and thus, convicted him vide his order dated 26.08.2019 and thereafter, sentenced him for two years vide his order dated 28.08.2019. The petitioner assailed the same by filing the appeal before the learned Sessions Judge, Panipat.

Learned counsel for the petitioner has contended that the prosecution of the petitioner is nothing but an abuse of the process of the Court. He submits that though, the petitioner is convicted by the Court of competent jurisdiction, however, during the pendency of the appeal before the Sessions Judge, Panipat, the parties have arrived at the compromise and they do not want to prosecute the petitioner any more. It is also submitted that petitioner and the complainant are now married with the consent of the parents and the marriage has been solemnized on 23.01.2022. Thus, the FIR and subsequent proceedings are prayed to be quashed. He has relied upon the judgments titled as Harbhajan Kaur Vs. State of Punjab and others, 2015(8) RCR (Criminal) 605; Ramgopal and another Vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322; Dr. Arvind Barsaul etc. Vs. State of Madhya Pradesh and another, 2008(2) RCR (Criminal) 910; Naranbhai Bhikhabhai Kachchadia Vs. State of Gujarat, CrI. Appeal No.418 of 2016 (arising out of SLP (CrI.) No.3244 of 2016) decided on 29.04.2016; Zakir Hussain Vs. State of Punjab and another, 1992(1) RCR (Criminal) 404; Harpal Singh @ Soni Vs. State of Haryana and others, 2008(4) RCR (Criminal) 459; Sukhchain Singh and

others Vs. State of Punjab and others, 2021(4) RCR (Criminal) 81;
Rizwan Saifi Vs. State of Punjab and another, 2017(2) AICLR 434; Aaqir
Aslam Thoker Vs. UT Chandigarh and another, 2020 (1) Law Herald 140;
Mukhtar Khan and others Vs. State of Chhattishgarh and another, 2015(4)
RCR (Criminal) 956; and Sunder and another Vs. State of Haryana and
others, 2015(26) RCR (Criminal) 639.

I have heard counsel for the petitioner and perused the record.

Admittedly, the prosecutrix in the present case is 15 years of age. There were specific allegations against the petitioner since lodging of the FIR. Even during the course of trial, the charges were found to have proved against the petitioner and he stood convicted and sentenced by the the Principal Magistrate and Members, Juvenile Justice Board, Panipat. Now appeal is pending before the learned Sessions Judge, Kurukshetra. The main thrust of learned counsel for the petitioner is on the compromise arrived at between the parties.

The Hon'ble the Supreme Court in State of Odisha Vs. Pratima Mohanty, 2021 SCC OnLine SC 1222 and Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, 2021 SCC OnLine SC 315 has held that the High Court should exercise the power under Section 482 Cr.P.C. with great circumspection and sparingly.

The Hon'ble Supreme Court in Gian Singh Vs. State of Punjab and another, (2012) 10 SCC 303 has laid down the following parameters:-

“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 a serious impact on society. Similarly, any compromise between the victim and the 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 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 the 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.”

The case in hand pertains to the minor victim, who is 15 years of age. The alleged compromise with the minor is after conviction of the petitioner. Subsequent to the conviction arrived at in view of the parameters laid down by the Hon'ble Apex Court, the offence under the present case falls in the category of heinous crime. The compromise alleged has no relevance in the facts and circumstances of the present case. Hence, this Court finds that petition has no merit, however, the parties are at liberty to avail their alternative remedy as available under the law before the concerned Court where the appeal is pending.

Petition is disposed of in the abovesaid terms.

(RAJESH BHARDWAJ)
JUDGE

09.03.2022
m.sharma

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No