

**122+271 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-6731-2020 (O&M)

Date of decision: 21.7.2022

Gurpreet Singh @ Sajan

..... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Jagjit Singh, Advocate, for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

Mr. N.S. Dadwal, Advocate, for respondent No.2.

RAJESH BHARDWAJ, J.**CRM-25214-2022**

Amended memo of parties is taken on record.

Application stands allowed.

Main case

The present petition has been filed for quashing of FIR No.35 dated 10.5.2019, under Sections 376, 120-B IPC and Section 4 of POCSO Act, 2012 (Offence under Section 120-B and Section 4 of POCSO Act were deleted), at Police Station Dhilwan, District Kapurthala and all the consequential proceedings arising therefrom on the basis of the compromise/affidavit dated 20.1.2020 (Annexure P-2).

As per the factual matrix of the case, the present FIR was lodged by the prosecutrix herself (name concealed), wherein it was alleged that the prosecutrix came into relationship with the petitioner in March 2018 and thereafter, he expressed his desire to marry the prosecutrix. On 2.8.2018, the petitioner accused called her in his shop and forcibly made illegal relation with her. She shouted at the accused and thereafter, she was threatened by the

petitioner and his uncle. The petitioner and his uncle Khushdeep Singh left the prosecutrix at the bus stand from there she returned to her house. On 10.9.2018, she came to know that she was pregnant. She went to the petitioner and informed about the same, however, instead of taking her to some Doctor, he again forcibly made illegal relations with her. On her insistence to fulfill the promise to marry her, he refused to marry her. Having no other alternative, the prosecutrix filed a complaint to the police for lodging the FIR and to take legal action against the accused. The FIR was lodged and the investigation commenced.

Learned counsel for the petitioner submits that the petitioner and the prosecutrix were in consensual relationship. He submits that the FIR was lodged under Section 376 IPC in addition with Section 4 of POCSO Act. He submits that however, the offence under Section 4 of POCSO Act and Section 120-B IPC were deleted and presently the petitioner is being prosecuted for the offence under Section 376 IPC. He submits that after the lodging the FIR, the prosecutrix realized her mistake and now she has entered into a compromise with the petitioner. He submits that as both the petitioner and the prosecutrix have decided not to pursue the FIR, the compromise be accepted and the FIR be quashed. He has relied upon the judgment of Hon'ble Supreme Court in Prashant Bhartiya vs. State of Delhi and another, 2021(3) RCR (Criminal) 714; judgments of this Court passed in CRM-M-19131-2016 titled as Manga Singh vs. State of Punjab and another, decided on 1.5.2018; CRM-M-31825-2017 titled as Deepak vs. State of Haryana and another, decided on 19.1.2018 and CRM-M-17228-2019 titled as Mandeep and another vs. State of Haryana and another, decided on 31.10.2019 and the judgment of Delhi High Court in

CRL.M.C.2384-2020 titled as Lalit Kumar Vats vs. State of NCT of Delhi and another, decided on 4.12.2020.

Heard learned counsel for the parties and perused the record.

Admittedly, the petitioner is being prosecuted for the offence under Section 376 IPC. Needless to say that the offence falls under the category of heinous offence. The prosecutrix had levelled specific allegations of forcible relationship with her on the promise of marriage. Allegedly she became pregnant as well, however, the petitioner accused refused to honour the promise. Learned counsel for the petitioner has submitted that both the petitioner and the prosecutrix realized their mistake and on the basis of the compromise arrived at, the FIR be quashed. Hon'ble Supreme Court in State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335 has held that the High Court has inherent power under Section 482 Cr.P.C. for quashing the FIR, however, the same should not be exercised for the offence falling under the heinous categories. It has been further observed in Bhajan Lal's (supra) as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) “Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Hon'ble Supreme Court in **Gian Singh vs. State of Punjab and another**, (2012) 10 SCC 303, has further held 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 the 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 the 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.”

Recently, Hon'ble the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and another**, 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.

There is no gainsaying that the offence in question does fall in the category of heinous offence and thus, the compromise as contended by learned counsel for the petitioner is of no consequences. Hence, inherent power under Section 482 Cr.P.C. cannot be invoked in the cases falling under the heinous category. Thus, this Court finds no merit in the prayer made by learned counsel for the petitioner and hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

21.7.2022
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No