

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

CRM-M-8339-2020

Date of decision : 14.10.2022

Nitish Kumar

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Virk, Advocate
for the petitioner.

Mr. Madhur Sharma, Asstt. Advocate General, Punjab
for respondent No.1-State.

Mr. Ujwal Anand, Advocate for
Mr. Gautam Sehgal, Advocate
for respondent No.2/Complainant.

PANKAJ JAIN, J. (ORAL)

By way of present petition, the petitioner is seeking quashing of FIR No.185, dated 05.06.2018 registered for the offences punishable under Sections 420, 406 of the IPC, Sections 10 & 24 of Immigration Act and Section 13 of Punjab Prevention of Human Smuggling Act, 2012 at Police Station Division No.5, Ludhiana (Annexure P-1) on the basis of compromise.

2. On 26.02.2020, the following order was passed:-

“Ld. counsel for the petitioner refers to Annexure P-2, and states that the matter has been amicably settled between the parties.

Notice of motion.

At this stage, Mr. Gautam Sehgal, Advocate has put in appearance and filed his Memorandum of Appearance on behalf of

respondent No.2-complainant and admits the factum of compromise.

In view of the matter, the parties shall appear before the Trial Court/Illaqa Magistrate on 30.03.2020, for getting their statements recorded with regard to the compromise arrived at between them. Ld. Trial Court/Illaqa Magistrate after ensuring their identity as well as the fact that the statements are being made by them voluntarily and without any pressure, shall record the same and will submit its report well before the next date of hearing. The Magistrate shall also report about the veracity of the compromise apart from informing the names and number of the accused involved and whether any of the accused has been declared proclaimed offender in the case.

List on 06.05.2020. ”

3. Pursuant to the aforesaid order, report from Judicial Magistrate 1st Class, Ludhiana dated 02.11.2021 has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

“From the statements, it appears that compromise has been voluntarily effected between the parties. The compromise appears to be genuine and without any pressure or coercion.

Perusal of record reveals that accused Nitish Kumar is only arrayed as an accused in the present FIR. He has never been declared as proclaimed offender.

As desired, the report along with statements of complainant, accused and Investigating officer is submitted for kind consideration.”

4. Ld. Counsel appearing for respondent No.2 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.

5. Similarly Ld. State Counsel has stated no objection in case the FIR is quashed based upon the compromise.

6. I have heard Ld. Counsel for the parties and have carefully gone through the records of the case.

7. 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.

8. 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.

9. Consequently, the petition is allowed. FIR No.185, dated 05.06.2018 registered for the offences punishable under Sections 420, 406 of the IPC, Sections 10 & 24 of Immigration Act and Section 13 of Punjab Prevention of Human Smuggling Act, 2012 at Police Station Division No.5, Ludhiana (Annexure P-1) and all proceedings arising therefrom, are, hereby, quashed *qua* the petitioner.

October 14, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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