

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

CRM-M-16921-2022
Date of decision: 15.7.2022

Princepal Singh @ Princepal and others Petitioners

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ramnish Puri, Advocate, for the petitioners.

Mr. Anmol Singh Sandhu, AAG, Punjab.

Mr. Amit Khari, Advocate, for respondent No.3.

RAJESH BHARDWAJ, J.

The present petition has been filed for quashing of FIR No.76 dated 5.6.2021, under Sections 354-A, 354-B, 511, 120-B IPC and Section 8 of POCSO Act, 2012, at Police Station Khilchian, District Amritsar and all the consequential proceedings arising therefrom on the basis of the compromise dated 18.1.2022 (Annexure P-1).

As per the factual matrix of the case, the present FIR was lodged by the victim/prosecutrix herself. As per the allegations made in the complaint to the Police, it was alleged that she was 17 years of age and studying in Class 10+2 at Government Girls Senior Secondary School, Rayya. Her date of birth is 16.8.2004. On 5.6.2021 at 9:30 a.m., she had gone to bring some household article from confectionary shop. When she reached near the house of Gurpreet Singh @ Gopi, then relative of Gurpreet Singh @ Gopi, namely, Lovepreet Singh @ Deepu brought her forcefully in the house of Gurpreet Singh by grabbing her wrist and took her into one room. He bolted the door and threw her on bed and tried to remove her clothes. She raised voice to save her honour and opened the door. After hearing the noise, her mother Sukhwinder Kaur

reached at the spot and saved her. She went to Police Station alongwith her mother and filed the complaint with a request to take legal action against the culprits. The FIR was lodged and investigation commenced.

Learned counsel for the petitioner submits that during the pendency of the investigation with the intervention of the respectables, the parties have settled their dispute amicably and decided not to prosecute the accused in the FIR. He has submitted that on account of the same, as the parties have settled the dispute amicably, their prosecution would be nothing but an abuse of the process of the Court. He submits that even otherwise, the petitioners have been falsely implicated in the present case and they have no role whatsoever in committing the offence as alleged. He has relied upon the judgments of Hon'ble Supreme Court in the case of **B.S. Joshi and others vs. State of Haryana and another**, (2003) 4 SCC 675; **Madan Mohan Abbot vs. State of Punjab**, 2008(4) SCC 582; **Nikhil Merchant vs. Central Bureau of Investigation and another**, 2008(9) SCC 677; **Shiji @ Pappu and others vs. Radhika and another**, 2011(10) SCC 705 and judgments of this Court in the case of **Kulwinder Singh vs. State of Punjab**, (P&H) 2007(3) RCR (Criminal) 1052 and **Jaswant Singh vs. Gurdial Singh**, 2007(3) RCR (Criminal) 446(P&H). He submits that as per the law settled, once the parties have settled the dispute, prosecution of the petitioners would be a futile exercise and thus, the present FIR be quashed in view of the compromise arrived at.

Learned counsel for the complainant has affirmed the submissions made by learned counsel for the petitioners.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the prosecutrix was less than 18 years of age and thus, a minor. The FIR in question has been lodged by the prosecutrix/victim herself. There is no dispute regarding the judicial precedents relied upon by learned counsel for the petitioners, however, the same are distinguishable on the facts and circumstances of the present case. The petitioners in the case in hand are being prosecuted for the offence under IPC and that of under the penal provisions of POCSO Act. As per the provisions of Section 29 and 30 of POCSO Act, there lies a presumption against the accused. 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.

The issue pertains to quashing of the FIR on the basis of the compromise arrived at under the POCSO Act is also pending consideration before the Hon'ble Supreme Court. There is no gainsaying that the offence in question does fall in the category of heinous offence against the minor 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

15.7.2022
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No