

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

242

CRM-M-15921 of 2021
Date of decision:21.02.2022

Rajan Sharma alias Rajan Ram Bani alias Raju ... Petitioner

Vs.

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

Ms. Kiranpreet Kaur, Advocate
for respondents No.2 and 3.

SUVIR SEHGAL, J. (Oral)

Counsel for the petitioner has submitted that although FIR has been lodged by the father of the victim on the allegation that his daughter has been enticed by the petitioner, but the petitioner has married to the victim on 31.03.1996, after she attained marriageable age and both are residing together at the matrimonial home.

Counsel representing the complainant and victim do not have any objection in case the prayer made in the petition is acceded to and the FIR and order dated 11.12.1996 are quashed.

Heard counsel for the parties.

On 09.04.2021, this Court passed the following order:-

“The Court has been convened through video conferencing due to Covid-19 pandemic.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No.26 dated 16.03.1996 (Annexure P-3) registered under Sections 363 and 366 of Indian Penal Code, 1860 at Police Station Sultanwind, District Amritsar alongwith all consequential proceedings arising therefrom and order dated 11.12.1996 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Amritsar, whereby, the petitioner has been declared as Proclaimed Offender, on the basis of the compromise dated 06.10.2020 (Annexure P-7) arrived at between the parties.

Counsel for the petitioner has contended that the impugned FIR (Annexure P-3) has been lodged by the father-in-law of the petitioner and the dispute between the parties has been settled which is apparent from the affidavit dated 01.10.2020 (Annexure P-8) executed by the complainant. He further submits that the petitioner was declared as Proclaimed Offender vide order dated 11.12.1996 (Annexure P-6) without following the mandatory provisions of Section 82 of the Code.

Notice of motion.

On asking of the Court, Mr. Saurav Khurana, Deputy Advocate General, Punjab accepts notice on behalf of respondent No.1-State. Ms. Kiranpreet, Advocate appears on

behalf of respondents No.2 and 3, who has admitted the factum of compromise.

The parties and Investigating Officer are directed to appear before the Duty Magistrate/Illaq Magistrate on 05.05.2021 for getting their statements recorded with regard to the compromise. The Duty Magistrate/Illaq Magistrate shall submit the report on or before the next date of hearing. The report be forwarded to this Court specifying the following:-

- 1. the number of accused arraigned in the FIR and how many have appeared before it and have made statements and whether any accused is absconding/P.O. in the case;*
- 2. the name of the complainant and injured/aggrieved and whether all of them have appeared and made their statements in support of the compromise;*
- 3. the stage of trial/proceedings;*
- 4. if the compromise is genuine, voluntary and out of free will of the parties.*
- 5. whether any other criminal case is pending against the accused.*

Report of Duty Magistrate/Illaq Magistrate be awaited for 09.09.2021.

Arrest of the petitioner is stayed till the next date of hearing.”

Pursuant to order passed by this Court, statements of the parties have been recorded and a report has been received from the Trial Court,

wherein, it has been submitted that compromise is genuine, voluntary and without any coercion or undue influence. On basis of the statement of the Investigating Officer, the Trial Court has further reported that besides petitioner, there is no other accused and he is not involved in any other criminal case, though he has been declared as Proclaimed Offender, vide order dated 11.12.1996 (Annexure P-6). It has been further submitted that investigation has been completed and challan has been presented.

Supreme Court in *Gian Singh Versus State of Punjab and another*, 2012(4) RCR (Criminal) 543 has held that the High Court has wide power under Section 482 of the Code of Criminal Procedure to quash an FIR or complaint having predominantly civil flavour or involving matrimonial offences and family disputes wherein the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In **Ramgopal and another Vs. State of Madhya Pradesh 2021 SCeJ 1146**, Supreme Court has held that Section 320, Cr.P.C is not an embargo against invoking inherent powers by the High Court under Section 482, Cr.P.C.

It transpires from the record that marriage of petitioner and respondent No.2 has been registered under the Hindu Marriage Act, 1955 at Mathura, Uttar Pradesh, where the parties were residing. The proclamation, Annexure P-5, under Section 82 of the Code has been issued by the JMIC, Amritsar on 09.12.1996 and two days later, vide impugned order dated 11.12.1996, Annexure P-6, the petitioner has been declared as Proclaimed

Offender. In terms of the mandatory provisions of Section 82 of the Code, the petitioner was required to be given a clear notice of 30 days, which has not been done. Consequently, this Court has no inhibition in holding that the petitioner has been wrongly declared a proclaimed offender, vide impugned order without following the due process of law. Still further, it deserves to be noticed that pursuant to order passed by this Court, the petitioner has deposited costs of Rs.21,000/- with the Poor Patient Welfare Fund, PGIMER, Sector 12, Chandigarh.

As the dispute between the parties has been settled, this Court is of the view that impugned order declaring the petitioner as Proclaimed Offender and FIR cannot be sustained.

Consequently, the petition is allowed. FIR No.26 dated 16.03.1996 (Annexure P-3) registered under Sections 363 and 366 of Indian Penal Code, 1860 at Police Station Sultanwind, District Amritsar alongwith all consequential proceedings arising therefrom and order dated 11.12.1996 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Amritsar, are quashed qua the petitioner.

February 21, 2022
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes