

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

CRM-M-18672-2022

Date of Decision: 21.12.2022

Sahil and another

..... Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Tarun Yadav, Advocate, the petitioners.

Mr. Brijesh Sharma, Assistant Advocate General, Haryana.

Mr. Ravinder Phogat, Advocate, for respondent No.2.

Rajesh Bhardwaj, J. (ORAL)

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.291 dated 26.08.2021, registered under Sections 406, 498-A, 377, 376, 511, 342, 354, 506, 34 IPC, Sections 8 and 12 of POCSO Act and Sections 9, 10, 11 of Prohibition of Child Marriage Act, at Police Station IMT, Rohtak and all the subsequent proceedings arising therefrom on the basis of compromise dated 07.04.2022 (Annexure P-2).

It has been contended by learned counsel for the petitioners that offence under Sections 8 and 12 of POCSO Act and Sections 9, 10, 11 of Prohibition of Child Marriage Act were added in the FIR for the reason that the wife was less than 18 years of age. He has submitted that the dispute between both the sides is totally matrimonial in nature and hence, prosecution of the petitioners for the offences under POCSO and Prohibition of Child Marriage Act is totally abuse of the process of the Court. He has submitted that for the welfare of both the sides, with the

intervention of the respectables, the parties have resolved their dispute amicably and now the husband and wife have filed a petition under Section 13-B of the Hindu Marriage Act, 1955, in which first motion statements have already been recorded and the case is fixed for recording of second motion statements on 12.04.2023. He further submits that in view of the facts and circumstances of the case, the prosecution of the petitioners is nothing but an abuse of the process of the Court.

Learned counsel for respondent no.2 has affirmed the submissions made by learned counsel for the petitioners.

Reply by way of affidavit of Mahesh Kumar, HPS Deputy Superintendent of Police, Rohtak dated 15.12.2022 filed in Court, is taken on record.

Learned counsel for the petitioner has handed over a demand draft No. 638214 dated 17.11.2022 amounting to Rs.1,00,000/- in the name of respondent No.2, which learned counsel for respondent No.2 has handed over to respondent No.2, who is present in person.

FIR in question was lodged by complainant-respondent No.2 and the investigation commenced thereon. However, with the intervention of respectables, finally the parties arrived at settlement and they resolved their inter se dispute, which is apparent from Compromise Deed, annexed as Annexure P-2. On the basis of the compromise, the petitioners are praying that continuation of these proceedings would be a futile exercise and an abuse of process of the Court and thus, the FIR in question and all the subsequent proceedings arising therefrom may be quashed in the interest of justice.

This Court vide order dated 19.07.2022/21.11.2022 directed the

parties to appear before the Illaqa/Duty Magistrate for recording their statements, as contended before the Court, and the Illaqa/Duty Magistrate was also directed to send its report.

In pursuance to the same, learned Judicial Magistrate Ist Class, Rohtak, has sent its report dated 05.12.2022 to this Court. With the report, he has also annexed original statement of respondent No.2-Soni and joint statement of the petitioner Sahil and Gyanender Kumar and statement of ASI Hawa Kaur recorded on 30.11.2022. On the basis of the statements, learned Judicial Magistrate Ist Class, Rohtak has concluded in its report that the matter has been settled between the parties amicably/voluntarily without any pressure or coercion. It is further mentioned in the report that except the present petitioners, there is no other accused involved in the present case. It is also mentioned in the report that neither the accused before this Court have been declared proclaimed offender nor any other criminal case is pending against them

I have heard learned counsel for the parties, perused the record and the report sent by learned Judicial Magistrate Ist Class, Rohtak.

A bare perusal of statutory provision of the 482 Cr.P.C. would show that the High Court may make such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 320 Cr.P.C. is equally relevant for consideration, which prescribes the procedure for compounding of the offences under the Indian Penal Code.

Keeping in view the nature of offences allegedly committed and the fact that both the parties have amicably settled their dispute, the continuation of criminal prosecution would be a futile exercise. The Hon'ble

Supreme Court in a number of cases including Narinder Singh and others Versus State of Punjab and another, 2014 (6) SCC 466; B.S.Joshi and others vs State of Haryana and another (2003) 4 Supreme Court Cases 675 followed by this Court in Full Bench case of Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR 1052 have dealt with the proposition involved in the present case and settled the law.

Thereafter, Hon'ble Supreme Court in Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303 further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335. Para 61 of the judgment reads 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 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 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 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.”

Evidently, petitioner No.1 and respondent No.2 are husband and wife and dispute between both the parties is totally matrimonial in nature and has been settled by them amicably. The husband and wife have filed a petition under Section 13-B of the Hindu Marriage Act, 1955, in

which first motion statements have already been recorded. Although offences alleged under Sections 376, 377 IPC, Sections 8 and 12 of POCSO Act and Sections 9, 10, 11 of Prohibition of Child Marriage Act are serious in nature, but keeping in view the nature of the dispute, which is totally matrimonial and amicable settlement effected between the parties, this Court exercises its power under Section 482 Cr.P.C. to quash the present FIR.

Applying the law settled by Hon'ble Supreme Court in plethora of judgments and this High Court it is apparent that when the parties have entered into a compromise, in the nature of cases as prescribed then continuation of the proceedings would be merely an abuse of process of the Court and by allowing and accepting the prayer of the petitioners by quashing the FIR would be securing the ends of justice, which is primarily the object of the legislature enacting under Section 482 Cr.P.C.

This Court is conscious of the fact that Sections 376/377 IPC, Sections 8 and 12 of POCSO Act and Sections 9, 10, 11 of Prohibition of Child Marriage Act come in the ambit of heinous and non-compoundable offences. But in the peculiar facts and circumstances and in the larger interest of both the parties and to secure the ends of justice, the Court deems it appropriate to use its discretion under Section 482 Cr.P.C. in favour of the parties.

In the facts and circumstances, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and hence, FIR No.291 dated 26.08.2021, registered under Sections 406, 498-A, 377, 376, 511, 342, 354, 506, 34 IPC, Sections 8 and 12 of POCSO Act and Sections 9, 10, 11 of Prohibition of Child Marriage

Act, at Police Station IMT, Rohtak and all subsequent proceedings arising therefrom, are hereby quashed qua the petitioners, on the basis of compromise (Annexure P-2).

Needless to say that the parties shall remain bound by the terms and conditions of the compromise and their statements recorded before the Court below.

Petition stands allowed.

21.12.2022		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned	: Yes/No
	Whether Reportable	: Yes/No