

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

CRM-M-27900-2022

Date of decision : 15.11.2022

Mritunjay Kumar Kahar

....Petitioners

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. S.S. Cheema, DAG, Punjab
for respondent No.1-State.

Ms. Akansha, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

By way of present petition, the petitioner is seeking quashing of FIR No.40, dated 01.12.2020 registered for the offences punishable under Sections 420, 120-B of the IPC, 1860 and Sections 66(C) and 66(D) of Information Technology Act, 2000 at Police Station Punjab State Cyber Crime Police Station, SAS Nagar, District Crime Wing, (Annexure P-1) on the basis of compromise.

2. On 01.07.2022, the following order was passed :-

“Prayer in this petition is for quashing of impugned FIR and all the subsequent proceedings arising therefrom, on the basis of compromise.

Notice of motion.

On asking of the Court, Mr. Joginder Pal Ratra, DAG,

Punjab accepts notice on behalf of respondent No.1 while Ms. Akansha, Advocate has appeared on behalf of respondent No.2.

List again on 15.09.2022.

In the meantime, parties are directed to appear before the trial Court/Illaqa Magistrate for recording their statements with regard to compromise/settlement within a period of 30 days from today.

The trial Court/Illaqa Magistrate is directed to submit a report on or before the next date of hearing containing the following information: -

1. Number of persons arrayed as accused in FIR,
2. Whether any accused is proclaimed offender, and
3. Whether the compromise is genuine, voluntary and without any coercion or undue influence.
4. Whether the accused persons are involved in any other FIR or not.
5. The trial Court is also directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR. ”

3. Pursuant to the aforesaid order, report from JMIC 1st Class, SAS Nagar, Mohali dated 22.07.2022 has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

- “1. As per record and statement of IO, there are two accused persons in the present FIR.
2. As per the statement of the Investigating Officer, accused have not been declared as proclaimed offender.
3. In view of the statements so suffered by the parties, this Court is of the considered view that the parties have arrived at a compromise voluntarily out of their free will and same seems to be genuine without any coercion and undue influence.

4. As per the statement of Investigating Officer, no other criminal case is pending against the present accused in PS State Cyber Crime, Mohali.

5. Statement of the Investigating Officer was recorded on 21.07.2022, as per which there is only one complainant/victim namely Girdhari Lal.”

4. The aforesaid report reveals that there are two accused persons namely Mritunjay Kumar Kahar and Meena Devi. However, the compromise has only been effected with accused-petitioner Mritunjay Kumar Kahar.

5. 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.

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

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

8. 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.

9. 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.

10. Since the parties are *ad idem* that the compromise/settlement has to be read strictly *inter se* between the parties to the present petition and the complainant wants to pursue prosecution of rest of accused, namely, Meena Devi and it is only Mritunjay Kumar Kahar who has approached this Court by way of present petition, the present petition is being entertained and allowed *qua* Mritunjay Kumar Kahar only.

11. The question raised by State counsel as to whether the FIR can be quashed in part or not already stands answered by Apex Court in '**Lovely Salhotra and another vs. State (NCT of Delhi)**' reported as **(2018) 12 SCC 391**, wherein it was observed as under:-

“xx xx xx

We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants – herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants - herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 – herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie.”

12. Consequently, the petition is allowed. FIR No.40, dated 01.12.2020 registered for the offences punishable under Sections 420, 120-B of the IPC, 1860 and Sections 66(C) and 66(D) of Information Technology Act, 2000 at Police Station Punjab State Cyber Crime Police Station, SAS Nagar, District Crime Wing, (Annexure P-1) and all proceedings arising therefrom, are, hereby, quashed *qua* the petitioner.

November 15, 2022

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No