

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(263)

CRM-M-35327-2021

Date of Decision: 07.04.2022

Alok Kumar Sharma

--Petitioner

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Balwinder Sangwan, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

None for respondent no.2.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed seeking quashing of FIR No.148 dated 5.3.2017 under Sections 498-A, 406, 323, 34 and 506 I.P.C., registered at Police Station, Saran, Faridabad (Section 34 IPC omitted later on) along with all the subsequent proceedings arising therefrom, on the basis of the compromise.

Notice of motion was issued in this case on 31.8.2021 and Mr. Jashan Singh Sekhon, Advocate put in appearance on behalf of respondent no.2-wife. Both the parties were directed to appear before the Illaqa/Duty Magistrate on 4.10.2021 for recording their statements in support of the compromise.

Learned counsel for the petitioner submits that the matter was duly compromised and the terms and conditions were also accepted by both the parties. Counsel has drawn attention of this Court to the compromise arrived at between the parties in pursuance to which the parties filed a petition under Section 13-B of Hindu Marriage Act for dissolution of the marriage in question and the same was dissolved by a decree of divorce dated 30.9.2020. Counsel has further drawn attention of this Court to para 6 of the petition filed under Section 13-B of Hindu Marriage Act, wherein the

conditions regarding the maintenance and thereafter withdrawing the outstanding litigation inter se the parties were also accepted by the parties. Counsel submits that petitioner has already fulfilled his part of obligations and paid a sum of Rs.7 lakh which has been duly accepted by the respondent wife. However, after receiving the said amount and dissolution of the marriage both the parties were bound by the compromise arrived at for quashing of the FIR in question but the respondent wife has not come forward and thus it is evident that she is not ready to abide by the terms and conditions of the compromise arrived at between the parties and quashing of the present FIR. Despite various opportunities granted by this Court, respondent wife has not appeared till date nor there is any representation on her behalf despite service. Learned counsel for the petitioner has relied upon the judicial precedent of the Hon'ble Supreme Court in case of ***Ruchi Agarwal v. Amit Kumar Aggarwal & others, (2005) 3 SCC 299*** to contend that where the wife is not withdrawing the FIR and not fulfilling her part of compromise, the intention of wife is to harass the husband.

This Court vide orders dated 31.8.2021 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 of the same, learned JMIC, Faridabad sent his report dated 4.10.2021 to this Court. With the report he has also annexed the original statements of accused/petitioner Alok Kumar Sharma and SI Anil Kumar recorded on 4.10.2021. However, statement of complainant could not be recorded as she did not appear before the court for recording her statement. On the basis of the statements, learned JMIC, Faridabad has

concluded in the report that the nature of the compromise cannot be determined as only the accused person has appeared before the court and the complainant has not appeared for recording of her statement in support of the compromise. It has been further submitted that the petitioner/accused namely Alok Sharma has made his statement voluntarily and without any threat or coercion. It has been further mentioned in the report that four persons were named in the FIR, however, the challan was presented against one person i.e. the petitioner, who has not been declared Proclaimed Offender.

I have heard learned counsel for the parties, perused the record and the report sent by learned JMJC, Faridabad.

A perusal of the file shows that the petitioner-husband performed his part of settlement but the wife/respondent no.2 has backed out of the compromise after receiving the agreed amount and has not complied with the conditions agreed upon by her. The petitioner-husband while performing his part of settlement paid Rs.3,50,000/- to the respondent-wife at the time of first motion statement and remaining amount of Rs.3,50,000/- at the time of second motion statement and finally their marriage was dissolved by decree of divorce attested copy of which has been placed on record. Both the parties in their joint statement recorded before the Family Court, Faridabad on 24.9.2020 stated that they are left with no claim whatsoever against each other. A perusal of file further shows that in the joint petition filed under Section 13-B of Hindu Marriage Act the respondent no.2 had agreed to appear before the Magistrate to suffer statement in support of compromise but she has chosen not to appear either before this Court or before the learned Magistrate to give statement for

quashing of present FIR. The Hon'ble Supreme Court in the case of ***Ruchi Agarwal (supra)*** has held that in such like situation where the intention of the wife is to harass the petitioner-husband, continuation of criminal proceedings against the petitioner would be an abuse of the process of the Court especially when the petitioner has performed his part of settlement and the respondent-wife is not coming forward to make statement in support of the compromise. Under these circumstances, the validity of the compromise cannot be negated.

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 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.”

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, 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.

In view of the attending circumstances, respondent no.2 is proceeded ex-parte. From the arguments advanced, perusal of the record and the judicial precedent relied upon by counsel, this Court is of the opinion that prosecution of the petitioner in the present FIR is nothing but an abuse of the process of law. To meet the ends of justice, this Court feels that invoking the inherent jurisdiction under Section 482 Cr.P.C is

Sections 498-A, 406, 323, 34 and 506 I.P.C., registered at Police Station, Saran, Faridabad along with all the subsequent proceedings arising therefrom are quashed qua the petitioner. Needless to say that the parties would be bound by the terms and conditions of the compromise arrived at.

Petition stands allowed.

(RAJESH BHARDWAJ)
JUDGE

07.04.2022

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No