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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31822-2020 (O&M)
Date of Decision:18.05.2022

Dilbag Singh

.. Petitioner

Vs.

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. K.S. Nalwa, Advocate and
Mr. ChakitanV.S. Papta, Advocate for the petitioner.
Mr. Bhupender Singh, DAG, Haryana.
Mr. Gursher Singh Dhillon, Advocate for
Mr. Survir Sidhu, Advocate
for respondent No.2.

...

Manoj Bajaj, J. (Oral)

The petitioner has filed this petition under Section 482 Cr.P.C. to challenge the impugned order dated 28.09.2020 (Annexure P-17), passed by Judicial Magistrate 1st Class, Sirsa, whereby a direction for registration of FIR against the petitioner has been issued by exercising power under Section 156(3) Cr.P.C., in violation of the mandatory statutory requirement of Section 197 Cr.P.C. in a complaint dated 07.09.2020 filed by respondent No.2, titled as '*Ajaib Singh Brar, Advocate Vs. Dilbag Singh, Sub Divisional Magistrate, Ellenabad*', under Sections 294, 504 and 506 IPC (Annexure P-6).

The FIR was registered on the complaint given by Ajaib Singh Brar, President of Bar Association, Ellenabad, District Sirsa, wherein he alleged that the accused Dilbag Singh is presently posted as Sub Divisional Magistrate in Ellenabad and on 19.08.2020, the complainant was informed by the Advocate Shrikant Thepra that when he appeared in the Court of Sub Divisional Magistrate, in reference to some matter then Sub Divisional

Magistrate, Ellenabad had abused him and misbehaved with him. Upon receiving this information, the complainant along with other Advocates, namely, Lakhwinder Singh Thind, R.K. Khatri, Sunny Verma, Jyoti Batra, Ghukar Singh, Mahabir Panwar, Vishnudutt Joshi, Jaswant Sahu, Sandeep Bhankhad, Pawan Sharma and Udey Partap Sidhu went to the chamber of accused, who got provoked and started abusing Advocate Shri Kant Thepra in front of them and said that “he is Jaat SDM and you Advocates do not know about my power and I can do anything, and he will get cancelled the licence of all the advocates and will not allow them to practice in the Courts during his tenure”. According to complainant the accused had threatened him, other Advocates and also made obscene gestures. The entire incident was recorded in the CCTV camera installed in the chamber of the accused, and in this regard, complaints were also moved by Bar Association, Ellenabad to C.M. Haryana, learned District and Sessions Judge, Sirsa, Hon'ble High Court and higher police authorities as well as Deputy Commissioner, Sirsa.

Subsequently, the petitioner moved an application bearing No.CRM-25266-2020 for placing on record the FIR No.317 dated 05.10.2020 under Sections 294, 504 and 506 IPC at Police Station Ellenabad, District Sirsa, which was registered pursuant to the impugned order dated 28.09.2020 and further prayed for modifying the prayer by challenging the said FIR (Annexure P-18) as well. After hearing the learned counsel for petitioner, this Court vide order dated 29.10.2020, accepted the prayer and also issued notice of motion to the other side. The said order reads as under:

“CRM-25266-2020

Learned counsel for the applicant/petitioner has contended that during the pendency of the petition, FIR bearing No.317 dated 05.10.2020 under Sections 294, 504 and 506 IPC has been registered at Police Station Ellenabad, District Sirsa in compliance with the impugned order dated 28.09.2020. He prays for permission to place on record the FIR as Annexure P-18 and further to challenge the same by modifying the prayer.

For the reasons mentioned in the application, prayer is accepted.

Order accordingly.

Main case

*Learned counsel contends that the alleged incident took place in the chamber of the petitioner who is posted as Sub Divisional Magistrate at Sirsa, where he was holding Court because of the outbreak of pandemic COVID-19, when the complainant along with his other colleagues (advocates) entered the chamber with a grievance. Learned counsel has further contended that the complaint and application dated 07.09.2020 (Annexures P-6 and P-7) respectively, for prosecution of the Presiding Officer is not maintainable in view of the Judges Protection Act, 1985, Section 77 IPC and Section 197 Cr.P.C, therefore, the impugned order dated 28.09.2020 (Annexure P-17), passed by Magistrate exercising power under Section 156 (3) Cr.P.C. is without jurisdiction. Mr. Nalwa, learned counsel has further relied upon the decision by Karnataka High Court in Criminal Petition No.3337-2020, titled as “**High Court of Karnataka Vs. C.M.Manjunath and Anr**”, decided on 07.10.2020.*

Notice of motion.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana accepts notice on behalf of respondent-State. At this stage, Mr. Suvir Sidhu, Advocate appears on behalf of respondent No.2.

Learned counsel for the respondents pray for time to file reply.

On their request, adjourned to 16.12.2020.

In the meantime, investigation in the subject FIR (Annexure P18) shall remain stayed.”

Pursuant to the notice of motion order dated 29.10.2020,

Learned State counsel has filed reply by way of affidavit of Jagat Singh,

Deputy Superintendent of Police, Ellenabad on behalf of respondent No.1-

State.

During the course of hearing, learned counsel for respondent

he has produced a copy of affidavit of Ajaib Singh respondent No.2 dated 22.03.2021, which is taken on record. He further states that respondent No.2 has no objection, if this FIR is quashed.

Learned State counsel though has filed a reply, but does not dispute the factum of compromise between the parties.

I have heard learned counsel for the parties and perused the case file.

The Full Bench judgment of this Court in **Kulwinder Singh and others Vs. State of Punjab, 2007 (3) RCR (Criminal) 1052**, categorically held that the High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and same is not confined to matrimonial disputes alone.

The relevant para is extracted below :-

“29. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Criminal Procedure Code which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Criminal Procedure Code, in order to prevent the abuse of law and to secure the ends of justice.”

In **Gian Singh Vs. State of Punjab and another, 2012 (4) RCR (Criminal) 543**, the Hon'ble Supreme Court has also discussed the powers of High Court under Section 482 Cr.P.C. and the relevant portion reads as under :-

“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 predominatingly civil flavour stand on 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, High Court may

quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Since the parties have settled the dispute and decided to live in peace, therefore, no meaningful purpose would be served in allowing the criminal proceedings to continue.

In view of the above, present petition is allowed and the order dated 28.09.2020 (Annexure P-17), FIR No.317 dated 05.10.2020 (Annexure P-18) registered under Sections 294, 504 and 506 IPC at Police Station Ellenabad, District Sirsa and all the subsequent proceedings arising therefrom are ordered to be quashed.

18.05.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No