

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

CRM-M-38002-2022 (O&M)

Date of Decision: *November 23, 2022*

Manoj Kumar

... Petitioner

Versus

State of U.T., and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

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

Mr. Rajeev Anand, Addl.P.P., U.T., Chandigarh.

Vivek Puri, J.

The petitioner has approached this Court by way of instant petition under Sections 482 of the Code of Criminal Procedure (for short 'the Code') invoking the inherent jurisdiction for quashing the FIR No. 91, dated 30.03.2019, under Section 376(2)(n) of the Indian Penal Code, registered at Police Station Industrial Area, Chandigarh and subsequent proceedings arising therefrom on the basis of the compromise.

Briefly, the FIR has been registered on the allegations that the husband of the prosecutrix had died about 2 years prior to the occurrence. The petitioner came in contact with her in October 2016 and represented himself to be a divorcee and intended to solemnize marriage with her.

The petitioner had been committing rape on the false pretext of marriage. It has also revealed that the petitioner was having a subsisting marriage and the same has not been dissolved.

Learned counsel for the petitioner contends that the prosecutrix is aged about 47 years. The dispute has been amicably settled in terms of the compromise (Annexure P-2). The prosecutrix has no objection if the FIR and the subsequent proceedings are quashed against the petitioner. She has also sworn affidavit (Annexure P-3) in this regard. The statement of the prosecutrix, during the course of trial, has also been recorded, wherein she has categorically stated, during her cross-examination, that she has no objection, if the petitioner is acquitted in the present case. Learned counsel for the petitioner has also relied upon a decision of the Hon'ble Supreme Court rendered in ***Criminal Appeal No. 1217 of 2022*** titled ***Kapil Gupta vs. State of NCT of Delhi and another, decided on 10.08.2022*** wherein the FIR under Section 376 IPC has been quashed on the basis of the compromise.

Learned Additional Public Prosecutor on behalf of the U.T., Chandigarh, has joined the proceedings and it has been argued that there are allegations with regard to the commission of heinous crime against women attributed against the petitioner. Even the prosecutrix, during the

course of trial, has supported the prosecution version. As such, no ground is made out to quash the FIR.

The powers vested under Section 482 of the Code are extra-ordinary in nature and are required to be exercised with a view to secure ends of justice. The inherent powers vested in the High Court are required to be exercised in exceptional cases to prevent a miscarriage of justice and abuse of the process of the Court or otherwise secure ends of justice. It is no doubt true that under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are non-compoundable and where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with circumspection and that too under exceptional circumstances. Such power is not to be exercised in those cases which involve heinous and serious offences of mental depravity or the offences like murder, rape, dacoity, etc. Such like offences cannot be termed to be private in nature. In ***Daxaben vs. State of Gujarat and others, 2022 AIR (Supreme Court) 3530***, the Hon'ble Supreme Court has laid down as following:-

38. However, before exercising its power under [Section 482](#) of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the

offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.”

It is significant to note that the present case does not appear to be a matter of private dispute or overwhelming and pre-dominantly of civil character. The offence under Section 376 IPC falls in the category of heinous and serious offence. It shall not be out of place to mention here that even while appearing in the witness box, the prosecutrix has supported the prosecution version and attributed the allegations with regard to the commission of rape against the petitioner. The ratio of the decision in **Kapil Gupta** (supra) relied upon by the learned counsel for the petitioner is distinguishable from the facts of the present case. Even in the said decision, it has been observed that the heinous and serious offences like murder or rape, the Court should not quash the proceedings. The FIR was quashed by observing that the prosecutrix was a lady of 23 years, she was complainant in one case and accused in another case. It was

further observed that trial of the cases will rob the prime of her youth. The charges in both the cases were yet to be framed and trial had not commenced. Even the victim in that case was not supporting the prosecution case and it was further observed that even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. Consequently, both the FIRs i.e. one lodged at the instance of the prosecutrix and another against the prosecutrix were quashed.

However, in the instant case, the prosecutrix is aged about 47 years and her statement during the course of trial has already been recorded. She has even supported the prosecution version and imputed the allegations with regard to the commission of rape against the petitioner.

Although in her cross-examination, she has deposed to the effect that she has no objection, if the petitioner is acquitted in the present case, but it shall not be out of place to mention here that it will not be appropriate to pick up a line emerging in the cross examination of a witness and base the conclusion thereupon. The statement of the witness has to be looked into and evaluated in entirety and that too by the trial Court at the appropriate stage of the trial. Furthermore, the Court is not expected to adjudicate the controversy on the basis of the objection/no objection of the victim for acquittal particularly in a non-

compoundable case. The statement of the victim is indicative of the fact that she was getting exhausted on account of frequent appearance in the Court and Police Station. She has also made a statement of no objection with regard to the acquittal of the petitioner for the sake of his family but further adds that the petitioner has actually done wrong with her. In these peculiar set of circumstances, it shall not be appropriate for this Court to quash the FIR and the subsequent proceedings on the basis of the compromise or even on the basis of the no objection as stated by the prosecutrix during the course of her cross-examination. On evaluating the material on record that neither the ends of justice will meet nor it will prevent the abuse of the process of any Court and as such, no justified ground is made out to quash the criminal proceedings against the petitioner.

Present petition is dismissed accordingly.

November 23, 2022

vk

(Vivek Puri)
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes