

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(281)

CRM-M-39228-2022
Date of Decision: 12.12.2022

Maqbool Khan @ Maqbool Kha

--Petitioner

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. Saurav Bhatia, Advocate for the petitioner.

Mr. Harpreet Singh, Addl. A.G., Punjab.

Ms. Sahiba Joshi, Advocate for respondents no.2 & 3.

RAJESH BHARDWAJ.J (Oral)

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.25 dated 13.4.2018 under Sections 323, 354-A, 506 IPC (section 354 IPC added later on) registered at Police Station, City Banga, District SBS Nagar (Nawanshahar) and order dated 31.1.2022 passed by the learned JMIC, SBS Nagar convicting and sentencing the petitioner and all the subsequent proceedings arising therefrom on the basis of compromise dated 1.7.2022 (Annexure P-3).

Brief facts of the present case are that respondent No.2 i.e. the complainant lodged the FIR in question against the petitioners-accused, wherein it was alleged that her marriage was solemnized about 18 years ago with Bintu i.e. respondent no.3 and they were blessed with five children out of which 4 are girls and one is son. They were living at the house of Satya Devi for the last 9 years by taking a room on rent along with three other families. On 11.4.2018 her husband had gone to meet his brother-in-law and she along with her children slept in the night. At about 12.15 AM their

neighbor Maqbool Khan i.e. the present petitioner came and hit the door of the room and the same was opened. He entered the room and grappled with her due to which her bangles were broken and clothes were torn. Thereafter he ran away from the spot on hearing the voice of motorcycle of her husband. She told everything to her husband. She along with her husband went to the place of accused persons for asking about the incident, then Maqbool Khan and his uncle Napeesh Khan along with his brother Matloo Khan started abusing them and quarreled with her husband. The FIR was lodged to take legal action against the above-said accused.

The investigation commenced and on completion of the same, the challan was presented. On the conclusion of the trial, accused Maqbool Khan was convicted and sentenced under Sections 457, 323, 354-A, 354, 506 IPC for one year rigorous imprisonment by the trial Court vide its order dated 31.1.2022. The accused-petitioner challenged the same by filing an appeal before the learned Sessions Court at SBS Nagar and the same is pending adjudication.

During the pendency of the appeal, good sense prevailed and with the intervention of the respectables, the parties entered into a compromise and decided to bury the hatchet. The petitioner approached this Court by way the present petition for quashing of the FIR and consequent proceedings arising therefrom on the basis of the compromise arrived at between the parties.

Learned counsel for the petitioner submits that the prosecution of the petitioner is nothing but an abuse of the process of the Court. He submits that though the petitioner has already been convicted by the Court of competent jurisdiction, however, during the pendency of the appeal

before the District Court, SBS Nagar, the parties have arrived at a compromise and respondents No.2 and 3 does not want to prosecute the petitioner any more. Thus, the FIR and the subsequent proceedings alongwith judgment and conviction order dated 31.1.2022 passed by the learned JMIC, SBS Nagar may kindly be quashed.

Learned counsel for the petitioners has relied upon the Full Bench Judgment of this Court titled as ***Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR 1052; Ramgopal and another vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322; and Sube Singh and another vs. State of Haryana and another, 2013(4) RCR (Criminal) 102.***

Learned counsel for respondents No.2 and 3 has supported the contentions of learned counsel for the petitioner, whereas, learned State counsel has opposed the same.

This Court vide order dated 31.08.2022 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 JMIC, SBS Nagar has sent her report dated 9.12.2022 to this Court. With the report she has also annexed the photocopies of statement of respondents No.2, Nanni Devi @ Angoori Devi, respondent no.3 Bintu and accused/petitioner Maqbool Khan recorded on 28.09.2022. On the basis of the statements, learned JMIC, SBS Nagar has concluded in the report that the compromise effected between the parties is voluntarily, without any inducement, coercion or pressure.

It is also mentioned that accused was not declared proclaimed offender in this case.

I have heard learned counsel for the parties, perused the record and the report sent by learned JMIC, SBS Nagar.

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. Hon'ble Supreme Court in ***Ramgopal and another V. State of Madhya Pradesh (supra)*** has held as under:-

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C., 1973 would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of

*inherent powers under Section 482 Cr.P.C., 1973 may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in **Narinder Singh & Ors. v. State of Punjab & Ors., (2014) 6 SCC 466 and Laxmi Narayan (Supra).***

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19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C., 1973 where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C., 1973 or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C., 1973 Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

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-dominatingly 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.

As a result, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and hence, FIR No.25 dated 13.4.2018 under Sections 323, 354-A, 506 IPC (section 354 IPC added later on) registered at Police Station, City Banga, District SBS Nagar (Nawanshahar) and order dated 31.1.2022 passed by the learned JMIC, SBS Nagar convicting the petitioner and all the subsequent proceedings arising therefrom are quashed qua the petitioner on the basis of compromise dated 1.7.2022 (Annexure P-3).

The appeal pending before the learned Appellate Court would automatically stands infructuous.

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.

(RAJESH BHARDWAJ)
JUDGE

12.12.2022

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No