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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54242-2021

Date of Decision: February 17, 2022

Parveen Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Manoj Pundir, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.242, dated 08.07.2021, under Sections 376 and 506 IPC and Section 6 of the POCSO Act, 2012, registered at Police Station Ladwa, District Kurukshetra and subsequent proceedings arising therefrom.

As per the factual matrix of the case, the present FIR was registered by the prosecutrix herself. It was alleged that in the year 2019, she had gone to her Mama's house at village Tangour, where Praveen, i.e. the petitioner, had also come. He was serving in Indian Army. She acquainted with him and used to call him on phone. In August 2019, he

wrong act with her. When she asked for performing the marriage with her, he threatened her to be killed. She told her mother and when her family members talked to Praveen, he denied and finally they decided to take the legal action against Praveen.

It has been contended by learned counsel for the petitioner that petitioner and respondent No.2 were in love affair for the last one year and they used to chat on phone as well. However, family members of respondent No.2 never agreed with their relationship because they both are close relatives as respondent No.2 is real niece of brother-in-law of the petitioner. It is submitted that the petitioner and respondent No.2 tried their level best to settle the differences with their family members and finally they married with each other on 10.12.2021. It is submitted that the offence under the POCSO Act is not attracted as respondent No.2 is also major. He submits that respondent No.2-complainant has filed an affidavit and in view of the same, the matter is compromised and she has no objection if the FIR is quashed and hence, the FIR in question should be quashed as the prosecution of the petitioner is totally an abuse of the process of the Court.

Heard.

There is no gainsaying that evidently the present FIR is for the offence under Section 376 IPC and offence under Section 6 of the POCSO Act. The arguments raised by learned counsel for the petitioner is for quashing of the FIR on merits as well as in view of the compromise arrived at between the petitioner and respondent No.2. So far as the argument regarding age of the prosecutrix is concerned, the same is disputed question of fact which deserves to be established before the trial Court. The matter is

this Court passed in CRM-M-8888-2020 Ravinder Singh vs State of Punjab and another, decided on 22.11.2021, Lovely vs State of Punjab and another, 2018(2) Crimes 438, Ranjit Singh vs State of Punjab and another, 2020(4) RCR (Criminal) 482, Sahib Singh and another vs State of Punjab and another, 2020(3) Law Herald 2547, Kuljot Singh vs State of Punjab and another, 2020(4) RCR (Criminal) 493, however, the same are distinguishable on the facts and circumstances of the present case.

The veracity of the allegations and the counter allegations can be evaluated by the trial Court only on the basis of the evidence to be produced before it by the respective parties. I am supported by the judgment of Hon'ble Apex Court in State of Odisha vs Pratima Mohanty etc. Crl.Appeal Nos.1455-1456 of 2021, decided on 11.12.2021 wherein the Hon'ble Supreme Court has held as under:-

“6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the Court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

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.”

The offence alleged in the FIR falls under the category of heinous nature. The victim is minor. Weighing the facts and circumstances of the present case on the parameters laid down by the Hon'ble Apex Court in **Gian Singh**'s case (supra), the present case fails to qualify the parameters laid down by the Hon'ble Apex Court. Thus, this Court is not inclined to exercise the jurisdiction under Section 482 Cr.P.C. in favour of the petitioner. The judicial precedents relied upon by learned counsel for the petitioner are distinguishable.

Dismissed.

The petitioner is at liberty to avail his remedy as available to him under the law.

February 17, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |