

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.5221 of 2023
Date of decision: 16.11.2023

Virender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sajal Bansal, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

Mr. Shantanu Singh, Advocate and
Mr. Aseem Monga, Advocate,
for Mr. Harish Mehla, Advocate,
for the complainant.

MANISHA BATRA, J.

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure by the petitioner-accused seeking quashing of FIR No.421 dated 28.08.2022 registered under Sections 323, 354, 452, 506, 509, 376/511 of IPC at Police Station Chandi Mandir, District Panchkula.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on 28.08.2022 on the basis of a written complaint submitted by the complainant/prosecutrix (name withheld) alleging therein that she was a police official. On the same day at about 3 PM, the petitioner who is also a police official and used to live in a nearby official residence, rang the doorbell of her house. He gained forcible entry inside her house by kicking the door open and tried to made an attempt to commit rape upon her by throwing her on bed and also tried to kill her by strangulating her. She raised alarm which attracted the neighbourers and then he fled away from her house. Initially, a case under Section 323, 354, 452, 506 and 509 of IPC was registered on her complaint. Investigation proceedings were initiated. Offence under Section 376 read with Section 511 of IPC was added later on. The petitioner was arrested. After completion of the investigation, challan was presented and presently, the petitioner is facing trial before the concerned Court.

3. The present petition has been filed by the petitioner submitting therein that a compromise has been arrived at between the complainant and himself and they have decided to resolve their dispute. The complainant has sworn an affidavit dated 16.12.2022 in his favour and has agreed to quash the FIR of this case. Hence, prayer has been made for allowing the petition.

4. Vide order dated 04.05.2023, direction was given to the

petitioner and the complainant to get their statements recorded before the learned trial Court who was directed to send his report. The learned Additional District & Sessions Judge, Panchkula i.e. the trial Court has sent report vide endorsement No.337 dated 18.07.2023 submitting therein the statements of the parties were recorded on 06.06.2023 and affirming that the compromise arrived at them is genuine, voluntary and is not result of any fraud or misrepresentation.

5. Learned counsel for the petitioner has submitted that the parties have arrived at a compromise by amicably settling the dispute between them. No useful purpose would be served by keeping the criminal proceedings pending against the petitioner as chances of his conviction are remote and bleak. Hence, it is urged that the petition deserves to be allowed.

6. Learned counsel for the complainant has supported the contentions as raised by learned counsel for the petitioner whereas the learned State counsel has submitted that there are serious allegations against the petitioner and, therefore, the FIR should not be quashed.

7. There are catena of judgments of Hon'ble Supreme Court whereby, parameters governing the exercise of jurisdiction of Section 482 of the Code of Criminal Procedure are well settled. In a celebrated judgment cited as **State of Haryana Vs. Bhajan Lal**, 1992 SUPP (1) SCC 335, the Hon'ble Supreme Court has discussed different categories of cases wherein, the power under Section 482 Cr.P.C. could be

exercised either to prevent abuse of process of law or otherwise to secure the ends of justice, while observing that it might not be possible to lay down any precise, clearly defined, sufficiently channelized, inflexible guidelines or rigid formulae and to give an exhaustive list or myriad kind of cases where such powers should be exercised. The paras relevant to this case may be set out as follows:-

“102 (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) to (6) XXX XXX XXX

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking

vengeance on the accused and with a view to spite him due to private and personal grudge.

8. In **Dhruvaram Murlidhar Sonar Vs. State of Maharashtra**, 2019 (18) SCC 191 the Hon'ble Supreme Court while reiterating the parameters as laid down in **Bhajan Lal's** case (supra) had observed that for quashing of the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate was not called for. Appreciation of evidence was also not permissible in exercise of inherent powers. If the allegations set out in the complaint did not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.

9. In **M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others**, 2021 SCC OnLine SC 315, the Apex Court observed that while the Courts ought to be cautious in exercising powers under Section 482 of Cr.P.C., they do have power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence? The merits of the allegations are not to be entered into nor the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence is to be trenched upon.

10. In view of the above discussed position of law qua exercise of inherent powers of this Court for quashing criminal proceedings, it is to

be considered as to whether the quashing of FIR in this case can be allowed. The petitioner has been booked for commission of offence punishable under Section 376 read with Section 511 of IPC i.e. offence of making attempt to commit rape, besides other offences which are triable by Magistrate on the allegations that on 28.08.2022, he had criminally trespassed into the house of the complainant and attempted to commit rape upon her. The victim in her statement as recorded before learned trial Court had stated that she had voluntarily entered into compromise with the petitioner and had no objection if the FIR of this case is quashed. In **Narinder Singh and Ors. Vs. State of Punjab and another**, (2014) 6 SCC 466, the Hon'ble Supreme Court had observed that while exercising power under Section 482 of Code of Criminal Procedure, the High Court has to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal case would put him into great oppression and prejudice and injustice would be caused to him by not quashing the criminal case. In the instance case, since the parties have recorded statements before learned trial Court affirming the factum of amicable settlement by stating that they have voluntarily arrived at a compromise, therefore, at this stage, the possibility of conviction is remote and bleak even if the proceedings before learned trial Court are ordered to be continued. In my considered opinion, the continuation of prosecution would result in sheer abuse of process of law and it is a fit case for exercising inherent jurisdiction of this Court under Section 482

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of the Code, so as to secure the ends of the justice and quashing of FIR would be for the welfare of the parties. As such, FIR No.421 dated 28.08.2022 registered under Sections 323, 354, 452, 506, 509, 376/511 of IPC at Police Station Chandi Mandir, District Panchkula and the consequential proceedings arising therefrom are ordered to be quashed. The petition stands allowed accordingly.

16.11.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No