

CRM No.37724 of 2022 in/and
CRA-S-860-SB-2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.37724 of 2022 in/and
CRA-S-860-SB-2013 (O&M)
Reserved on: December 20, 2022
Date of Decision: January 09, 2023

Amit Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Inderjit Sharma, Advocate
for the appellant.

Mr.Karunesh Kaushal, AAG, Punjab.

Mr.Karan Chaudhary, Advocate
for respondent No.2.

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RAJESH BHARDWAJ, J.

Adumbrated facts of the case are that respondent No.2/prosecutrix (name concealed) lodged FIR No.46, dated 12.05.2006, under Sections 376, 120-B and 506 IPC, registered at Police Station Qadian, for taking legal action against seven accused including the applicant/appellant. It was alleged by the prosecutrix that she was student of B.A.Part II and while studying in college she developed friendship with Anju d/o Chaman Lal. Her brother Surinder Kumar started keeping an evil eye on her. They started pressurizing her to marry with Surinder Kumar, however, the prosecutrix rejected the proposal. Her parents performed her engagement with one Rajinder son of Jang Bahadur. On coming to know

about the same, Surinder Kumar and co-accused hatched conspiracy and called the prosecutrix at their home to meet Surinder Kumar. The prosecutrix went to meet Surinder Kumar at his home and there she was raped by him and the co-accused threatened her. On the basis of these allegations, the prosecutrix lodged an FIR against all seven accused with a prayer to take the legal action against them. The Investigating Agency concluded the investigation and filed challan against six accused and they were charged for the offences under Sections 376, 120-B and 506 IPC by the trial Court. On conclusion of the trial, learned trial Court convicted co-accused Santosh Kumari, Anju and Raj Kumar under Section 376 read with Section 120-B IPC and 506 IPC whereas convicts Dimple and Amit Kumar (present applicant/appellant) were convicted only for the offence under Section 506 IPC. Applicant/appellant Amit Kumar was sentenced for two years RI with fine of Rs.2000/- vide order dated 04.03.2013. Main accused Surinder Kumar was declared proclaimed offender. Aggrieved by the same, applicant/appellant filed the present appeal assailing his conviction and sentence vide order dated 04.03.2013.

During pendency of the appeal, both the parties entered into a compromise and hence CRM-37724-2022 has been filed for compounding the offence under Section 506 IPC in view of the compromise arrived at between the parties. The compromise in the shape of affidavit of the prosecutrix has been placed on record as Annexure A-1.

It has been vehemently contended by counsel for the applicant/appellant that the applicant/appellant was falsely and frivolously implicated in this case. He has submitted that allegations against

applicant/appellant levelled by the prosecutrix were regarding threatening her and thus, entered into a conspiracy with co-accused. He has submitted that by no stretch of imagination, offence under Section 376 IPC was made out against the applicant/appellant. He has submitted that the applicant/appellant was not even charged for the offence under Section 376 IPC as the main accused Surinder Kumar was declared proclaimed offender. Charge of offence under Sections 376, 120-B IPC had been framed against co-accused Chaman Lal (since deceased). He has submitted that after thorough trial, the applicant/appellant was convicted for the offence under Section 506 IPC and resultantly he was sentenced for two years RI vide impugned order dated 04.03.2013. He has submitted that during pendency of the appeal, the applicant/appellant and the prosecutrix with the intervention of respectables, amicably resolved the dispute. He has submitted that the applicant/appellant has a bright future and the prosecutrix is also married and very well settled in her matrimonial life. He has submitted that offence under Section 506 IPC is compoundable. Conviction of the applicant/appellant has totally destroyed his promising future. He has submitted that though the FIR was lodged for the offence under Sections 376, 120-B and 506 IPC, however, after thorough trial, the applicant/appellant was convicted only for the offence under Section 506 IPC. He has submitted that offence under Section 506 IPC is compoundable and hence the parties be allowed to compound the offence. To buttress his arguments, he has relied upon the judicial precedents of Hon'ble the Apex Court and that of Hon'ble High Court in **Jayrajsinh Digvijaysinh Rana vs State of Gujarat and another** 2012(4) RCR (Criminal) 589, **Ramgopal**

and another vs State of Madhya Pradesh 2021(4) RCR (Criminal) 322, B.S.Joshi and others vs State of Haryana and another 2003(2) RCR (Criminal) 888, M/s Pepsi Foods Ltd. Vs Special Judicial Magistrate 1997(4) RCR (Criminal) 761, Deva Ram vs State of Rajasthan and another, 2014(3) RCR (Criminal) 854, Md.Abdul Sufan Laskar and others vs State of Assam 2008(4) RCR (Criminal) 115, Mukhtar Khan and others vs State of Chhattisgarh and another 2015(4) RCR (Criminal) 956, Mulukuri Siva Prasad vs State of Andhra Pradesh 2001(4) Supreme 254, Harsimran Singh vs State of Punjab and another 2022(3) PLR 94, (Jarnail Singh @ Jaanu and another vs State of Punjab and another) passed in CRM-M-22729-2021, on 15.11.2022 , (Satinder Singh and another vs State of Punjab and others) passed in CRM-2775-2022 & CRM-2779-2022 in/and CRA-S-613-SB-2011, on 22.08.2022, Pawan Kumar vs State of Haryana and another 2016(2) RCR (Criminal) 176, Jagtar Singh alias Bhola and others vs State of Punjab and another 2015(34) RCR (Criminal) 928, and submits that conviction order dated 04.03.2013 be set aside by allowing the applicant/appellant to compound the offence. He further submits that Hon'ble the Supreme Court in similar facts and circumstances, has settled the law that High Court should invoke its inherent power under Section 482 Cr.P.C. to meet the ends of justice.

Counsel for respondent No.2/prosecutrix has not opposed the submissions made by counsel for the applicant/appellant. He has submitted that prosecutrix is married and happily settled in her matrimonial life. He further submits that she has no objection for compounding of the offence in the facts and circumstances of the case.

On the other hand, learned State counsel has opposed the prayer made by counsel for the applicant/appellant. He has submitted that there are specific allegations against the applicant/appellant regarding threatening and after thorough trial, he was convicted and sentenced under Section 506 IPC.

Heard.

It is evident that the prosecutrix and Surinder Kumar, co-accused both were of the age of majority at the time of occurrence. On the basis of allegations, FIR was registered and the accused were tried by the trial Court. Main accused Surinder Kumar could not be arrested and thus, was declared proclaimed offender by the learned trial Court. The learned trial Court vide its order dated 04.03.2013, convicted the applicant/appellant and the co-accused for the offence under Sections 376 read with Section 120-B IPC and Section 506 IPC. The applicant/appellant was convicted only for the offence under Section 506 IPC and was sentenced for two years RI. The compromise arrived at between the prosecutrix and the applicant/appellant has been proved by way of an affidavit of the prosecutrix, which has been placed on record by the applicant/appellant and the same has been affirmed by the counsel for the prosecutrix. Offence under Section 506 IPC is compoundable offence. Even if the offence in FIR was under Section 376 read with Section 120-B IPC as well, however, the applicant/appellant was charged for the offence under Section 506 IPC only and the same was found to have been proved. Occurrence in the present case relates back to the year 2006 and thereafter the prosecutrix was duly married and now she is very well settled in her matrimonial life. Hon'ble Supreme Court in Ramgopal and another(supra) and Gian Singh vs State

of Punjab and another (2012) 10 Supreme Court Cases 303 has settled the law that inherent power of the High Court under Section 482 Cr.P.C. can be invoked in the given circumstances even if the offence is not compoundable under Section 320 Cr.P.C. Sections 320(5) and 320(8) Cr.P.C. read as under:-

“320(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

320(8) The composition of an offence under this Section shall have the effect of any acquittal of the accused with whom the offence has been compounded.”

This Court while taking into consideration abovesaid authorities relied upon by learned counsel for the appellant is of the view that the present case is a fit case where the Court should exercise its jurisdiction to accept the compromise effected between the parties which appears to be voluntarily without any force or coercion. The parties have buried their differences and have decided to end their dispute.

Hon'ble Krishna Iyer, J, in Mrs.Shakuntala Sawhney vs Mrs.Kaushalya Sawhney and others (1980) 1 SCC 63 aptly summed up the essence of compromise in the following words:- “the finest hour of justice arrives propitiously when parties despite falling apart, bury the hatchet and weave a sense of fellowship of re-union.

Weighing the facts and circumstances of the present case on the anvil of law settled, CRM-37724-2022, filed by the applicant/appellant qualifies for invoking the power of this Court under Section 482 Cr.P.C. to

meet the ends of justice, is allowed. The offence is allowed to be compounded. Accordingly, appeal filed by appellant Amit Kumar is disposed of in view of compromise arrived and conviction and sentence order, dated 04.03.2013, passed against him only, is set aside and he shall be deemed to have been acquitted of the charged offence for all intents and purposes.

January 09, 2023
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(RAJESH BHARDWAJ)
JUDGE

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