

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**270****CRM-M No.7293 of 2019****Date of Decision : 12.07.2023**

Darshan Singh

....Petitioners

VERSUS

State of Punjab and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. B.S. Jatana, Advocate for the petitioner.

Mr. Harjinder Singh Sidhu, AAG Punjab for respondent No.1.

Mr. Hitesh Verma, Advocate for respondent No.2.

ALKA SARIN, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.24 dated 17.04.2014 registered under Sections 376-D and 342 of the Indian Penal Code, 1860 (for short 'IPC') at Police Station City Mansa, District Mansa and all subsequent proceedings arising out of the said FIR, on the basis of compromise/affidavit dated 24.04.2014 (Annexure P-2).

2. On 03.10.2019 the following order was passed :

“Prayer in this petition is for quashing of the FIR along with all consequential proceedings arising therefrom on the basis of compromise between the parties.

Learned State counsel submits that the matter has been investigated at two different times and untraced report was submitted by the police.

The parties are directed to appear before the Illaqa Magistrate/trial Court for recording their respective statements with regard to compromise/settlement on 05.11.2019.

The Illaqa Magistrate/trial Court is directed to submit a report along with copies of statements of the parties on or before the next date of hearing containing the following information as well:

- (i) Number of persons arrayed as accused in FIR;*
- (ii) Whether any accused is proclaimed offender;*
- (iii) Status of the trial/proceedings and,*
- (iv) Whether the compromise is genuine, voluntary, and without any coercion or undue influence.*

For awaiting report, adjourned to 25.02.2020.”

3. Learned counsel for the petitioner would contend that the parties have since appeared before the concerned Court and got their statements recorded. The statement of the complainant has been recorded wherein she has stated that she has entered into a compromise with the petitioner with her free will and without any undue influence or coercion and that she has no objection if the present FIR is quashed.

4. Learned counsel appearing on behalf of respondent No.2 has reiterated that the parties have since compromised and their statements to this effect have since been recorded.

5. Report dated 09.01.2020 of the Chief Judicial Magistrate, Mansa has also been received by this Court wherein it has been stated that the compromise entered into between the parties is genuine.

6. The Court is alive to the fact that the present FIR has been registered under Sections 376-D and 342 IPC. Hon'ble Supreme Court in case of **Kapil Gupta vs. State of NCT of Delhi & Anr. [2022 (4) RCR (Criminal) 497]**, in a case under Section 376 IPC, has held as under :

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is

at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No.2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since the respondent No.2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of

the present case and in order to give succour to Respondent No.2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”

7. In the present case, the complainant had initially lodged a FIR in the year 2014 wherein allegations were made against the petitioner and FIR was registered under Sections 376-D and 342 IPC. Thereafter, during investigation the complainant had given an affidavit, which also finds mentioned in the status report filed by way of affidavit of Baljinder Singh, PPS, Deputy Superintendent of Police, Sub Division Mansa, District Mansa, wherein it has been stated that the petitioner was not the person who allegedly committed the rape. The Police continued with the investigation, however, the accused could not be identified and thereafter an untraced report was submitted on 26.06.2014. However, Chief Judicial Magistrate, Mansa did not accept the untraced report and ordered further investigation vide order dated 31.07.2014. After re-investigation, the untraced report was again submitted to the Court on 25.11.2016, however, once again the Chief Judicial Magistrate, Mansa refused to accept the untraced report and ordered re-investigation vide order dated 25.11.2016. It has further been stated in the status report that the matter is still at the stage of re-investigation and untraced report would be filed because till date the alleged accused have not been identified.

8. Keeping in view the above peculiar facts and the law laid down in cases of **Kapil Gupta (supra)**, **Gian Singh vs. State of Punjab & Anr.**,

[2012 (10) SCC 303] and Kulwinder Singh & Ors. vs. State of Punjab & Anr. [2007 (3) RCR (Criminal) 1052], FIR No.24 dated 17.04.2014 registered under Sections 376-D and 342 of the Indian Penal Code, 1860 at Police Station City Mansa, District Mansa is quashed, including all subsequent proceedings arising out of the said FIR, on the basis of compromise dated 24.04.2014 (Annexure P-2).

9. The petition is accordingly allowed. Pending applications, if any, also stand disposed off.

12.07.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO