

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

119

2023:PHHC:118024

CRM-M-9985-2023

Date of decision: September 5th, 2023

Smt. Anjali

.....Petitioner

Versus

Sanjay Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

The instant petition has been filed to impugn orders dated 30.11.2016 (Annexure P-2) passed in Criminal Case No.03 of 2016 (CIS No.0111/2016) by learned JMIC, Gurugram. A challenge has also been made to the order dated 06.06.2022 passed by learned Additional Sessions Judge, Gurugram, vide which respondent No.1 has been discharged as an accused in FIR No.414 dated 12.12.2015 under Section 66 of Information Technology Act, 2005 (hereinafter referred to as 'IT Act') registered at Police Station Sector 17/18, Gurugram.

2. Brief facts and sequence of events leading to the instant petition may be noticed as thus:-

3. Petitioner (hereinafter referred to as 'complainant') submitted a complaint dated 30.05.2012 to the police alleging therein that her husband (respondent No.1) had illegally accessed her email account in May 2012; after changing her email password, had also deleted her personal data including emails exchanged between them during their courtship period. However, on account of a compromise effected between the complainant and her husband i.e. respondent No.1, the complainant withdrew her complaint, dated 30.05.2012.

On 30.10.2015, the complainant again filed a complaint before the police with a request to re-investigate her previous complaint made on 30.05.2012 by claiming that she had only withdrawn her previous complaint because of the compromise effected between them. Resultantly, FIR No.414 dated 12.12.2015 under Section 66 of the IT Act was registered against respondent No.1 leading to the filing of a challan before the trial Court.

4. After hearing arguments on the point of charge vide impugned order dated 30.11.2016 (Annexure P-2) discharged the accused on the ground that the second complaint dated 30.10.2015 was barred by limitation. The revision petition preferred to impugn the order of discharge was upheld by the learned Revisional Court vide order dated 06.06.2022 (Annexure P-4).

5. Learned counsel for the complainant has challenged the impugned orders by vehemently arguing that despite sufficient evidence having been produced by the complainant qua commission of an offence punishable under Section 66 of the IT Act. The Courts below had failed to appreciate that the first complaint was filed on 30.05.2012 by the complainant which was well within limitation. Furthermore, the second complaint dated 30.10.2015 was just a request to re-investigate the previous complaint.

6. Still further, though the parties had compromised the matter in the year 2012, however, since respondent No.2 had failed to adhere to the terms and conditions of the compromise, the petitioner was well within her right to revive her earlier complaint.

7. Learned counsel has still further asserted that the Courts had failed to appreciate that though Section 468 Cr.P.C. did create a bar

upon the Court to take cognizance of an offence after three years, however, Section 473 Cr.P.C. clearly provided that in certain cases extension of time could be given, once the delay was properly explained. Learned counsel thus, vehemently submitted that in the instant case, the delay stood satisfactorily explained as the conduct of respondent No.1 in not adhering to the compromise and retracting from it, made it abundantly clear that it was a ploy on his part to escape criminal liability.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. On a perusal of the material on record, it transpires that the offence in question was allegedly committed in the month of May in the year 2012 which led to the first complaint dated 30.05.2012, being filed by the complainant against respondent No.1. After the parties resolved their dispute and compromised the matter, the complaint dated 30.05.2012, was withdrawn by the complainant on 06.12.2012. Thereafter, the complainant filed the second complaint on 30.10.2015 praying for re-investigation of her first complaint, which was admittedly beyond the period of limitation i.e. three years which led to registration of the FIR in question on 12.12.2015 and subsequent presentation of challan on 13.01.2016. As far as, the first complaint is concerned, it was indeed made within the period of limitation. As per the admitted case of the complainant herself, she had withdrawn her previous complaint as the matter stood amicably compromised. Hence, once the parties had already settled the matter pertaining to the same allegations/dispute, it would be nothing but a misuse of the process of law to permit its resurrection and that too after 3 years from the date of

alleged crime i.e. May, 2012.

11. Still further, an offence punishable under Section 66 of the IT Act carries a maximum sentence of three years. The complainant made a prayer for re-investigation on 30.10.2015, which admittedly was beyond the statutory limitation period prescribed under Section 468 Cr.P.C., which categorically prohibits Courts from taking cognizance of an offence punishable with imprisonment for a term exceeding one year but not exceeding three years, after expiry of three years. No doubt, Section 473 Cr.P.C. allows extension of period of limitation for taking cognizance in certain cases, however, in the instant case as per the learned counsel, the delay had been on account of a compromise effected between the parties and subsequently, respondent No.1 allegedly taking a U-turn. On a pointed query put to the learned counsel as to what were those terms and conditions of the compromise deed which had not been adhered to, by respondent No.1, he was unable to bring to the notice of this Court any material in support thereof. Hence, it is evident that no plausible explanation much less reasonable has been brought to the notice of this Court, which would warrant the exercise of powers under Section 473 Cr.P.C..

12. As a sequel to the above, no ground is made out to interfere in the orders passed by the Courts below.

13. The petition, therefore, stands dismissed.

September 5th, 2023

Puneet

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No