

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

CRM-M No.23601 of 2023

Date of decision: 10th May, 2023

Paresh Malhotra

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vishva Bahl, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is seeking quashing of FIR No.0018 dated 07.03.2016 (Annexure P-1) under Sections 304-A, 337, 338, 427, 279 IPC registered at Police Station Chattiwind, District Amritsar (Punjab) on the basis of compromise (Annexure P-2) dated 27.04.2023 arrived at between the parties.

Learned counsel submits that subsequent to the registration of the FIR in question, on the intervention of respectables and well-wishers, the parties have amicably settled their disputes and hence, in the aforementioned circumstances, continuation of the criminal proceedings would not serve any useful purpose.

Notice of motion.

On the asking of Court, Mr. Ramdeep Pratap Singh, Sr. Deputy Advocate General, Punjab, who is present in Court, accepts notice on behalf of respondent No.1/State. Mr. Rahi Mehra, Advocate

puts in appearance and files his power of attorney on behalf of respondents No.2 and 3.

Learned counsel appearing on behalf of respondents No.2 and 3 does not oppose the submissions made by the counsel opposite and the prayer made for quashing of the FIR in question on the basis of compromise effected between the parties.

Learned State counsel has however, vehemently opposed the prayer made by the learned counsel for the petitioner. He submits that the offences in question affect the society at large and the FIR in question cannot be quashed merely because a compromise has been arrived at between the parties.

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

As per the allegations levelled in the FIR in question, the complainant along with his brother-in-law Rajiv Arora (since deceased) and his friend Deepak Sharma, had gone to attend a marriage on 06.03.2016. After attending the marriage, when they were returning, the deceased was pillion riding on the motorcycle of his friend Deepak Sharma and was being followed by the complainant on another vehicle. In the meantime, the offending vehicle i.e. a car make Ford Fiesta bearing registration No.HR-08-R-0054 came from the opposite direction in a rash and negligent manner, and collided with the motorcycle of the deceased. Both the riders, including the deceased, fell on the road on account of the collision. The deceased died on the spot,

whereas Deepak Sharma was grievously injured. As per the allegations levelled in the FIR, the accident in question occurred only on account of negligent driving of the driver of the offending vehicle.

Undoubtedly, where the offences are private in nature and the parties have resolved their disputes, the courts should not hesitate to quash an FIR. Having said that, the powers of this Court under Section 482 Cr.P.C. though extensive and wide, are certainly not unbridled and have to be exercised with utmost restraint.

In case of offences which are non-compoundable in nature, quashing of an FIR on the basis of a compromise can be permitted by this Court by invoking its powers under Section 482 Cr.P.C. **only if** both the accused as well as the victim are parties to the settlement arrived at.

The question which thus arises is as to who could be termed “*a victim/aggrieved person*” in a given case. It would be thus, apposite to reproduce Section 2(wa) of Cr.P.C., wherein, the term ‘*victim*’ has been defined, as under:-

“2(wa). “*victim*” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “*victim*” includes his or her guardian or legal heir.”

A reading of the aforementioned, leaves no manner of doubt that in offences particularly affecting the human body (e.g. under Sections 302/304/304A/304B and 396 IPC), it is the deceased, who

would fall within the meaning of 'victim' as it is, he/she, who has suffered the injury and subsequent loss of life on account of the act or omission for which the accused has been charged with. No doubt, the legal heirs of the deceased would also fall within the definition of 'victim', but that would be to a limited extent for the purpose of maintaining an appeal within the first part of Section 2(wa) of Cr.P.C.

Adverting to the case in hand, the petitioner has been charged for offences under Sections 304-A, 337, 338, 427, 279 IPC. Undoubtedly, the offences for which the petitioner has been charged with, cannot be treated to be private in nature. On account of his alleged rash and negligent driving, the deceased lost his life and another person sustained grievous injuries.

Undoubtedly, in the facts and circumstances, the victim would be deceased Rajiv Arora, as it is he, who suffered at the hands of the petitioner. In the facts and circumstances, the compromise effected between the family of the deceased and the petitioner accused would not come to his rescue. It needs to be reiterated that a compromise effected between the accused and the complainant to the exclusion of the victim, who in the instant case would be the deceased and deceased alone, would not only be void but also against the mandate of law. If the Courts start giving effect to compromise for offences like the one in hand and start quashing FIRs, it would be contrary to the statutory provisions of law.

This Court, in ‘Baldev Singh vs. State of Punjab’
2016(164) AIC 307, has held as under:

“18. In the facts and circumstances of the case it would indeed be paradoxical and incorrect to hold that the offence under Section 304A is private in nature. Its serious impact on society is not subject to understatement. When a person or persons lose their life/lives due to the rash and negligent act of the accused, the question of mens rea or intention in such a situation pales into insignificance. The wrong cannot be termed to be private or personal in nature like offences arising out of matrimony, relating to dowry etc., family disputes or criminal cases having overwhelmingly and predominantly a civil flavour like commercial, financial, mercantile, civil or partnership matters.

XXXX	XXXX	XXXX
XXXX	XXXX	XXXX

20. To say that Courts should not hesitate to intervene in favour of the accused in such cases is indeed a dangerous proposition with a potential to provide an impetus to a proclivity on the part of the drivers to continue with their rash and negligent act buoyed by the thought that they would get away with the crime by affording sufficient compensation to the victim's legal representatives. Once it has been authoritatively held by the Supreme Court that even grant of compensation under Section 357 (3) Cr.P.C. is not to be regarded as a mitigating circumstance to reduce the sentence imposed and neither can it be a substitute for an adequate sentence in all cases, it cannot be held that in cases where the matter is settled with the legal heirs of the deceased by giving

adequate compensation, the proceedings should be quashed.

21. Likewise, to draw an analogy that in cases involving the offence under Section 307 which are of heinous nature, it has been opined by the courts that the factum of a settlement or compromise between the parties can be a guiding factor, is not justified. In the case under Section 304A the victim is obviously not present to settle the matter. To permit a legal representative or legal heir to compromise or settle the matter is indeed an invitation to a dangerous trend and cannot be permitted. To quash the proceedings under Section 304A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. Inclusion of the legal representatives in the definition of victim does not clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation.”

As a sequel to the above, this Court is thus not inclined to quash the FIR in question and consequently the proceedings arising therefrom on the basis of compromise effected between the petitioner and the complainant i.e. brother in law of the deceased.

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 10, 2023

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No