

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

CRM-M-50158-2018 (O&M)
Date of Decision: 23.03.2023

JAGBIR

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Aakash Dalal, Advocate
for the petitioner.

Mr. R.K. Singla, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for quashing of FIR No.857 dated 25.08.2018 (Annexure P-1), registered under Sections 377 and 451 of the Indian Penal Code (for short 'the IPC') at Police Station Jhajjar, District Jhajjar, along with consequential proceedings arising therefrom on the basis of compromise dated 26.10.2018 (Annexure P-2).

2. Upon issuance of notice of motion, status report dated 15.03.2023 by way of an affidavit of Sh. Gulab Singh, HPS, Deputy Superintendent of Police, Jhajjar, District Jhajjar, on behalf of respondent-State of Haryana, has been filed in the Court today, which is taken on record, subject to all just exceptions.

3. The afore-said FIR was registered under Sections 451 and 377 of the Indian Penal Code, on the complaint of one Sukhbir son of Gaje Singh resident of Village Dhakla; which reads as under:-

“ To, SHO Sahib, Jhajjar, Sir. Request is that, I Sukhbir s/o Gaje Singh, caste jat, is resident of village Dhakla. Last night after eating food I went to my neighborhood Rajesh s/o Rander for hookup. When I came back to my house then Jagbir alias Leelu s/o Ramphal was doing wrongful act with buffalo calf which was tied in my house who ran away after seeing me. Whose information I gave to the police. You have now come, I have given my complaint to the police. Legal action should be taken against Jagbir alias Leelu s/o Ramphal.”

4. Learned counsel for the petitioner submits that respondent No.2 (complainant) had lodged the above-said FIR due to some misunderstanding due to night time, wherein, the petitioner was named. It is submitted that now with the intervention of the respectable persons of the area and elders of the family, settlement has been arrived at between the parties at the *panchayat* level and a compromise has been entered into between the petitioner and respondent No.2-complainant on 26.10.2018 (Annexure P-2). Accordingly, the petitioner is seeking quashing of FIR on the basis of compromise.

5. Per contra, learned State counsel has opposed the prayer of quashing of FIR, on the basis of compromise by filing the status report, wherein, the following stand has been taken :-

5. That on the basis of the above said complaint, the present FIR No.857 dated 25.08.2018 was initially registered under Sections 377, 451 IPC in P.S. Jhajjar and the investigation was set into motion.

6. *That during the course of investigation, the site plan of the place of occurrence was prepared and the statement of witnesses were recorded.*

7. *That during the course of investigation, medical examination of Buffalo Calf was conducted by veterinary doctor and the report was obtained.*

8. *That during the course of investigation, on 25.08.2018, the present petitioner was arrested in the present case and the medical examination of the present petitioner was conducted in Govt. Hospital Jhajjar and the samples handed over by the concerned doctor were sent to FSL for examination.*

9. *That the final report u/s 173 Cr.P.C., in the present case has been submitted u/s 377, 451 IPC before the Court of competent jurisdiction on 24.09.2018.*

10. *That the charges upon the present petitioner u/s 451, 377 IPC were framed on 05.10.2018 and now trial of the present case is pending in the court of Ld. C.J.M., Jhajjar and is fixed for 11.04.2023 for prosecution evidence. “*

6. I have heard learned counsel for the parties and perused the paperbook as well as the status report filed on behalf of State.

7. The offence under Section 377 of the IPC is a serious offence and provides stringent punishment for sexual offences i.e., imprisonment for life or with imprisonment of either description for a term which may extend to ten years. On the plain reading of the provision of the Section 377 of IPC, it is clear that the penal Section is intended to punish the offender, for the commission of the offence of unnatural sex and/or carnal intercourse against the order of nature with any male or female or animal. The offence includes sodomy, buggery and bestiality. The offence under Section 377 I.P.C is complete, when the person accused of the offence uses his sex organ or

derives sexual satisfaction by committing any of the acts, which is against the order of nature and/or, if the sexual act or sexual satisfaction is derived or fulfilled by the accused person with a male or female or animal in an unnatural manner.

8 Animals may be mute but we as a society have to speak on their behalf and no pain or agony should be caused to the animals. Cruelty to animals also cause psychological pain to them. Animals breath like humans and have emotions; they require food, water, shelter, normal behavior, medical care, self-determination. The animals have a right to life and bodily integrity, honor and dignity. Animals cannot be treated merely as property.

9. In the case of ***Karnail Singh v. State of Haryana, 2019(3) R.C.R. (Criminal) 396***, the Hon'ble Punjab and Haryana High Court, while considering a case under Punjab Prohibition of Cow Slaughter Act, observed as under:

“93. Their Lordships of the Hon'ble Supreme Court in "A. Nagaraja's" case have held that Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animals life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. "Life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour or dignity. All the animals have honour and dignity. Every specy has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks. Their Lordships have evolved the term "species' best interest." The Corporations, Hindu idols, holy scriptures, rivers have been declared legal entities and thus, in

order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/legal person. The animals should be healthy, comfortable, well nourished, safe, able to express innate behavior without pain, fear and distress. They are entitled to justice. The animals cannot be treated as objects or property... ”

10. In the considered opinion of this Court, it will not be open for this Court to exercise its power under Section 482 of the Cr.P.C in the case of an offence punishable under Section 377 of the IPC only on the ground of settlement, which in the instant case would itself be a questionable issue as the offence is stated to have been committed with buffalo calf. Moreover, the final report u/s 173 Cr.P.C., in the present case already stands submitted.

11. Accordingly, this Court does not find any merit in the present petition and the same is rejected. However, it is made clear that no adjudication is being made on the merits of the controversy and the observations made by this Court regarding the nature of offence are only for the limited purposes of considering the prayer for quashing on the basis of alleged settlement.

12. None of the observations made above shall be construed as any observation or expression on the merits of the case and the trial Court shall proceed with the trial without being influenced by the above-said observations.

13. Pending application/s, if any, shall also stand closed.

March 23, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No