

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

**CRM-M-25971 of 2019
DATE OF DECISION :- 05.10.2023**

Vikas Malhotra and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Anish Verma, Advocate for the petitioners.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. Iranpreet Singh, Advocate for respondent No. 2.

PANKAJ JAIN, J. (Oral)

By way of present petition, the petitioners are seeking quashing of FIR No.125 dated 26.9.2018, registered for the offence punishable under Sections 406, 420, 120-B of the Indian Penal Code, Police Station Phase 11, Mohali, on the basis of compromise dated 11.1.2019 (Annexure P-2).

2. On 19.5.2023, the following order was passed:-

“Petitioners have filed the instant petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No.125 dated 26.09.2018 (Annexure P-1) under Sections 120-B, 406 and 420 of the Indian Penal Code, registered at Police Station Phase-XI, Mohali, along with all consequential proceedings arising therefrom on the basis of order dated 11.01.2019 (Annexure P-2) passed by the Court of Additional Sessions Judge, S.A.S., Nagar, wherein it has been mentioned that the compromise has been arrived at between the parties before the Mediation Centre.

Mr. Iranpreet Singh, Advocate appears and files Vakalatnama on behalf of respondent No.2 in the Court today, which is taken on record, subject to all just exceptions. He admits the factum of compromise arrived at between the parties.

List on 31.07.2023.

In the meanwhile, the parties are directed to appear before trial Court/Illaq Magistrate for recording of their respective statements with regard to the compromise, on or before 04.07.2023 or any other date convenient to the said Court.

The Illaq Magistrate/trial Court is directed to submit a report containing the following information as well:-

(i) Number of persons arrayed as accused in FIR and those found involved during investigation;

(ii) What is the status of the proceedings of the case/ FIR;

(iii) Whether any accused is proclaimed offender;

(iv) Whether the accused persons are involved in any other case or not;

(v) Whether all the concerned have signed the compromise deed;

(vi) Whether the compromise is genuine, voluntary, and without any coercion or undue influence;

(vii) The trial Court is also directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR.

The aforesaid report be ensured to be sent to this Court on or before the date fixed.”

3. Pursuant to the aforesaid order, report from Judicial Magistrate Ist Class, S.A.S. Nagar, Mohali dated 15.7.2023 has been received, which is taken on record. As per the report, the trial Court has recorded as follows:-

“On the subject cited above, I have the honour to submit that in the above mentioned case, Hon'ble Punjab & Haryana High Court, Chandigarh, vide order dated 19.05.2023 had directed the parties to appear before the Trial Court/Illaq Magistrate,

on or before 04.07.2023 or any other date convenient to the said court, for getting their statements recorded with regard to compromise, in FIR No.125 dated 26.09.2018 under Section 406, 420 120-B of IPC, registered at Police Station Phase-XI, Mohali.

Complainant/respondent no.2 Hitender Kundu son of Satvir Singh came present in court and recorded his separate statement that the FIR No. 125 dated 26.09.2018. U/s 406, 420, 120-B IPC was registered at Police Station Phase-II, District SAS Nagar, Mohali against accused persons namely Vikas Malhotra S/o Ramesh Malhotra and Shri Raj @ Rajesh Thakur S/o Ranjit Singh on the basis of his complaint/statement. Now, he has entered into a compromise with regard to the said FIR in the present case with the accused persons namely Vikas Malhotra S/o Ramesh Malhotra and Shri Raj @ Rajesh Thakur S/o Ranjit Singh in the present FIR. The compromise is genuine. He further stated that the compromise has been effected between him and accused persons namely Vikas Malhotra S/o Ramesh Malhotra and Shri Raj @ Rajesh Thakur S/o Ranjit Singh voluntarily, out of his free will, without any kind of pressure, coercion or undue influence etc. Except the present statement, they had not executed any written compromise deed. He has no objection, if the aforesaid FIR is quashed against the above said accused persons namely Vikas Malhotra S/o Ramesh Malhotra and Shri Raj @ Rajesh Thakur S/o Ranjit Singh on the basis of above-stated compromise. He is the only complainant/victim/aggrieved person in the present case.

Statement of accused/applicant Vikas Malhotra S/o Ramesh Malhotra recorded separately in writing in which he stated that he has effected compromise with the complainant namely Hitender Kundu S/o Satvir Singh, in FIR No. 125 dated 26.09.2018, U/s 406, 420, 120-B IPC registered at Police Station Phase- II, District SAS Nagar, Mohali. He has compromised the present FIR matter with the complainant

Hitender Kundu S/o Satvir Singh voluntarily and without any kind of pressure, coercion or undue influence. The said compromise is genuine. He will be bound by all the conditions laid down in the above-said compromise. Except the present statement, we have not executed any written compromise deed. As such, it has been prayed that the present FIR against him may be quashed. He has not been declared proclaimed offender by any court of law in any criminal case. He had also placed on record photocopy of his Aadhar Card for his identification.

Statement of accused/applicant Shri Raj @ Rajesh Thakur Son of Ranjit Singh, recorded separately in writing in which he stated that he has effected compromise with the complainant namely Hitender Kundu S/o Satvir Singh, in FIR No. 125 dated 26.09.2018, U/s 406, 420, 120-B IPC registered at Police Station Phase- 11, District SAS Nagar, Mohali. He has compromised the present FIR matter with the complainant Hitender Kundu S/o Satvir Singh voluntarily and without any kind of pressure, coercion or undue influence. The said compromise is genuine. He will be bound by all the conditions laid down in the above-said compromise. Except the present statement, they have not executed any written compromise deed. As such, it has been prayed that the present FIR against him may be quashed. He has not been declared proclaimed offender by any court of law in any criminal case. He had also placed on record photocopy of his Aadhar Card for his identification.

It is pertinent to mention here that the above said accused persons and complainant were identified by their respective counsels.

Investigating officer ASI Netar Singh Belt No.217/FGS, SAS Nagar, presently posted at PS Phase-11 Mohali, appeared in court and suffered his statement in writing that he is the investigating officer of the present case bearing FIR No.125 dated 26.09.2018, U/s 406, 420, 120-B IPC was registered at

Police Station Phase-11, District SAS Nagar, Mohali on the statement of the complainant Hitender Kundu S/o Satvir Singh against accused persons namely Vikas Malhotra S/o Ramesh Malhotra, Jasneet Kaur and Shri Raj @ Rajesh Thakur S/o Ranjit Singh but accused Jasneet Kaur was not arrested in the present FIR till date. There is only one complainant Victim in the said FIR Namely Hitender Kundu S/o Satvir Singh.

He further gave the answer of the following questions i.e.

Q.1 Number of persons arrayed as accused in the FIR?

A. The present FIR was registered against three accused persons namely Vikas Malhotra S/o Ramesh Malhotra, Jasneet Kaur and Shri Raj @Rajesh Thakur S/o Ranjit Singh but accused Jasneet Kaur was not arrested in the present FIR till date.

Q2. What is the status of the proceedings of the case/FIR?

A. No Challan/report under section 173 Cr.P.C. has been presented in the court till date in the present case as investigation is still ongoing.

Q3. Whether any accused is declared proclaimed offender?

A. No, none of the accused in the present case have been declared as proclaimed offender.

Q4. Whether the accused persons are involved in any other FIR/criminal case or not?

A. Criminal cases/FIR have been registered against the accused persons namely Vikas Malhotra S/o Ramesh Malhotra and Shri Raj @ Rajesh Thakur S/o Ranjit Singh are as follows:-

1. FIR No. 118/2020, U/s 406, 420 IPC, PS Phase-11, SAS Nagar.

2. FIR No. 163/2018, U/s 406, 420, 120-B IPC, PS Phase-11, SAS Nagar.

3. FIR No. 120/2019, U/s 406, 420, 120-B IPC and 24 of Immigration Act, PS Phase-11, SAS Nagar.

4. FIR No. 141/2014, U/s 420, 120-B IPC, PS Nangal, Rupnagar.

5. FIR No. 30/2019, U/s 406, 420, 120-B IPC and 24 of Immigration Act, PS Phase-11, SAS Nagar.

6. FIR No. 40/2020, U/s 52A Prison Act IPC, PS Tarpadi, Patiala.

Q5. How many victims/complainants are there in the FIR?

A. There is only one complainant/victim namely Hitender Kundu S/o Satvir Singh in the present FIR.

It is pertinent to mention over here that as per the statement of the investigating officer there is a 3rd accused by the name of Jasneet Kaur who has not been arrested in the present FIR case till date and is also not a party to the present petition.

In view of the statements of the parties, I am satisfied that the compromise effected between the parties is genuine, voluntary and without any coercion or undue influence in the present FIR case. Hence, the report is submitted accordingly with original statements of the parties.”

4. Mr. Iranpreet Singh, Advocate appears for respondent No.2 and admits the fact of parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto against the petitioner are quashed.

5. Learned State counsel has stated no objection in case the FIR is quashed based upon the compromise.

6. I have heard learned counsel for the parties and have carefully gone through the records of the case.

7. After considering judgment rendered by the Apex Court in **Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688, Kulwinder Singh & others Vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052 and Ram Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of**

2012 decided on 29th of September, 2021), the proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

- (a) *Power u/s 482 Cr.P.C. vested with this Court is not affected by Section 320 of the Code.*
- (b) *However, wider the power greater the caution.*
- (c) *The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.*
- (d) *The said power is not to be exercised in the prosecutions involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.*
- (e) *Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High Court would not refuse to quash FIR under Section 307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.*
- (f) *Such exercise at the hands of High Court would be permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter is still under investigation.*
- (g) *While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the*

accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.

8. Thus, keeping in view the aforesaid facts and circumstances, this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested u/s 482 Cr.P.C. to quash the FIR as :-

- (i) The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra).*
- (ii) The offences are of private nature.*
- (iii) The parties have compromised.*
- (iv) As per the report received the compromise is said to be voluntary in its nature.*
- (v) Complainant/victim has entered into compromise on his own volition.*

9. Consequently, the petition is allowed. FIR No.125 dated 26.9.2018, registered for the offence punishable under Sections 406, 420, 120-B of the Indian Penal Code, Police Station Phase 11, Mohali and all proceedings arising therefrom, are, hereby, quashed qua the petitioners.

(PANKAJ JAIN)
JUDGE

05.10.2023

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No