

262 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34595-2019

Date of Decision: 16.02.2023

GURPREET SINGH @GOPI

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Amandeep Singh, Advocate for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

Mr. Vikas Gupta, Advocate for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition under Section 482 Cr.P.C., on the basis of compromise, is seeking quashing of FIR No.37 dated 01.08.2018 under Sections 363, 366A and 376 of IPC, 1860 and under Sections 3 and 4 of POCSO Act, registered at Police Station Kabirpur (Ahalikalan), District Kapurthala (Annexure P-1) and all other consequential proceedings arising therefrom.

Short reply by way of affidavit dated 03.02.2023 of Sukhwinder Singh DSP, Sub-Division Sultanpur Kapurthala filed on behalf of respondent No.1 is taken on record.

In terms of orders of this Court, learned Additional District & Sessions Judge, Kapurthala has submitted his report. It *inter alia* confirms that all the parties appeared before the Court and tendered their statements qua compromise arrived at between the parties; the compromise is voluntary, genuine and without any coercion all the accused as well complainant have entered into compromise.

Learned State counsel on instruction from Investigating

Officer and learned counsel for respondent No.2 submitted that they have no objection if FIR and consequent proceedings in view of compromise are quashed.

Learned counsel for the parties are *ad idem* that prosecutrix has solemnized marriage with petitioner and they are blessed with a child.

Learned counsel for the complainant submits that daughter of the complainant has solemnized marriage with petitioner and she is happily staying with her husband. They do not want to pursue the impugned FIR as it would spoil life of their daughter as well as grand child.

Relying upon its earlier judgments in 'Gian Singh Vs. State of Punjab and others, (2012) 10 SCC 303' and 'The State of Madhya Pradesh Vs. Laxmi Narayan and others (2019) 5 SCC 688', a two Judge Bench of the Hon'ble Supreme Court in 'Ramgopal and another Vs. State of Madhya Pradesh 2021 SCC online SC 834' while dealing with power of High Court under Section 482 of Cr.P.C. to quash non-compoundable offences on the basis of compromise between the disputing parties has held:

“11. True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under [Section 320 Cr.P.C.](#) Any such attempt by the court would amount to alteration, addition and modification of [Section 320 Cr.P.C.](#), which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of [Section 320 Cr.P.C.](#), which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of [Section 320 Cr.P.C.](#) is

not an embargo against invoking inherent powers by the High Court vested in it under [Section 482](#) Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press [Section 482](#) Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under [Section 482](#) Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence,

besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh & Ors. vs. State of Punjab & Ors. and Laxmi Narayan (Supra).

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed between two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

From the perusal of the enclosed FIR, report of the Trial Court and compromise arrived between the parties, it transpires that contesting parties have amicably resolved their issue, thus, no useful purpose would be served by continuing the proceedings. The offence of rape is not simple brutality or cruelty upon person of a female whereas it amounts to quelling sole, heart and mind of a victim as well her entire family members which in

Indian context drastically affects their social, moral and matrimonial life. The possibilities of getting suitable matrimonial match abysmally reduce. In the present case, the petitioner has not simply made an offer of marriage whereas he has already solemnized marriage with the victim and she is happily cohabiting with the petitioner, thus, denial of prayer of the petitioner not only would be against the interest of petitioner but also victim and her family members. Further, there appears to be no chance of conviction, thus, the continuance of the proceedings would just waste valuable judicial time and it is well-known fact that courts are already overburdened.

In view of above facts and circumstances, the present petition deserves to be allowed and accordingly allowed.

FIR No.37 dated 01.08.2018 under Sections 363, 366A and 376 of IPC, 1860 and under Sections 3 and 4 of POCSO Act, registered at Police Station Kabirpur (Ahalikalan), District Kapurthala (Annexure P-1) and all other consequential proceedings arising therefrom are quashed qua the petitioner(s).

(JAGMOHAN BANSAL)
JUDGE

16.02.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>