

237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50302-2021
Date of decision: 20.01.2023

Neelam and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Pooja Chopra, Advocate, for the petitioners.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Mr. Amit Sharma, Advocate, for respondent No.2.

RAJESH BHARDWAJ, J.

The petitioners have approached this Court praying for quashing of the FIR No.144, dated 15.06.2020, registered under Section 346 IPC (challan under Sections 306, 120-B IPC only and not under Section 346 IPC), at Police Station Civil Lines, Patiala, District Patiala and all the subsequent proceedings arising therefrom on the basis of compromise (Annexure P-2).

As per the facts of the case, the present FIR was lodged by the complainant, namely, Sohan Lal, who is father of the deceased Barjinder Singh. It was alleged that he is a labourer by profession and has four children, out of them three sons and one daughter. His son Barjinder Singh aged about 30 years was married with Neelam and they had two sons and one daughter out of the marriage. On 11.06.2020 at about 11:00 pm at night, his son Barjinder Singh went out of the home but did not return. The complainant had been searching for him persistently, but failed to trace him out. It was suspected that somebody kept him in illegal confinement and thus, request was made to take legal action. Subsequent to that an information was received on 19.06.2020 that a dead body was found from Nohar, District Hanumangarh and on the

right arm of the dead body B.N. was engraved. The Police alongwith the complainant reached at Bhakhara River Patiala, where, a diver Shankar Bhardwaj showed the photographs of Barjinder Singh in his mobile to the complainant, who after recognizing told that the dead body was of his son. On 23.06.2020, the Police alongwith the complainant Sohan Lal reached Police Station Nohar, Rajasthan and came to know that a dead body was found in a decayed condition from Gokarka River and after postmortem, which was given to Incharge Dharamshala for cremation on 21.06.2020. Photographs of the cremation were also handed over to the complainant and statements of the witnesses were recorded under Section 161 Cr.P.C. The complainant filed an application for adding Section 302 IPC in the FIR. It was alleged by the complainant that on 11.06.2020 at about 11:00 pm, his son left the home without informing anyone and he could not be traced thereafter. The FIR was registered under Section 346 IPC on 15.06.2020. On 19.06.2020, lateron he came to know that his son has died and his dead body was found in Gokarka river. On 11.06.2020, his son talked to his nephew Happy on phone and told him on phone that his wife Neenam having love affair with a person namely, Bharamjit and that Bharamjit, Bholi aunt/mausi of Neelam and one another person named Gurmeet Singh had spoiled his domestic life, due to which he remained under depression. He also said that he found tik tok video made by Bharamjit and Neelam, in which both of them were meeting each other. It was alleged that son of the complainant earlier also told him number of times that his wife Neelam was having love affair with Bharamjit and Bharamjit had threatened that in case he tried to stop them, then he would be killed. It was alleged that his son was killed by his wife Neelam, Bharamjit, Gurmeet Singh, Soma, Deepa, Bholi Mausi/aunt of Neelam and thereafter they threw his body

in the canal. The investigation commenced and after investigation the police found the case for the offence under Sections 306/120-B IPC and the offence under Section 346 IPC was deleted. On the commencement of the investigation, the challan was presented and the charges were framed.

Learned counsel for the petitioners has vehemently contended that the petitioners have been falsely and frivolously implicated in this case. She submits that no offence under Section 306 IPC is made out against the petitioners. She has submitted that the allegations made by the complainant in the FIR are against the petitioners that it is because of them the son of the complainant committed suicide. She submits that petitioner No.1 i.e. the wife of the deceased was living separately from the last about two years in her parental home and petitioners No.2 and 3 also had no complicity in the same. She submits that the necessary ingredients for constituting the offence under Section 306 IPC read with Section 107 IPC for abetment are never fulfilled in the facts and circumstances of the case and thus, the petitioners are not liable for the prosecution for the offence under Sections 306, 120-B IPC. She submits that petitioner No.1 Neelam had performed karewa marriage with petitioner No.2 Bharamjit on 11.05.2020. She submits that after the registration of the FIR with the intervention of the respectables, both the sides have amicably resolved all the outstanding issues and thus, prosecution of the petitioners is nothing but an abuse of the process of the Court. She has relied upon the judgments of this Court in Sunny alias Soni etc. vs. State of Punjab and another, passed in CRM-M-2064-2010 decided on 15.02.2010; Rajbir and others vs. State of Haryana, passed in CRM-M-5799-2011 decided on 16.07.2012 and Kulwinder Kaur vs. State of Punjab and another, passed in

CRM-M-35268-2011 decided on 30.07.2012 and submits that in the interest of justice, the FIR in question deserves to be quashed.

Learned counsel for respondent No.2 has affirmed the fact that the matter has been settled between the parties.

However, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that there are specific allegations made by the deceased against the petitioners. He has submitted that petitioner No.1 Neelam is the wife of the deceased and there are allegations of extramarital relations of her with petitioner No.2 and it is because of the same, the deceased used to remain in depression. He submits that on 11.06.2020, the deceased along with his father went to bring his wife from her parental home, however, she refused to come with him and on returning from home, the deceased went missing and thereafter committed suicide. He submits that the ingredients under Section 107 IPC are duly made out. He further submits that after the investigation, the allegations were found to be substantiated and challan was presented and now the trial Court has also framed charges against the petitioners, which would show that there is *prima facie* case against the petitioners. He further submits that offence under Section 306 IPC falls in the category of heinous offence and thus, the prayer of the petitioners for quashing of the FIR be rejected.

Heard.

Evidently, petitioner No.1 is the wife of the deceased. It is apparent from the allegations made by the complainant in the FIR that there was a dispute between the deceased and his wife i.e. petitioner No.1 due to her extramarital affair with petitioner No.2. It was further alleged that petitioner No.3 was also involved with the co-accused. As per the allegations, on

11.06.2020, the deceased went to his in-laws to bring his wife, however, on her refusal, he returned and left the home without informing anyone. His father i.e. the complainant made strenuous efforts to trace him but failed to trace him out. Lateron, his dead body was recovered on 19.06.2020 from Gokarka River. Petitioner No.1 is also said to have performed karewa marriage with petitioner No.2 on 11.05.2020. Needless to say that offence under Section 306 IPC falls in the category of heinous offences.

Hon'ble Supreme Court in **State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335** has held that the High Court has inherent power under Section 482 Cr.P.C. for quashing the FIR, however, the same should not be exercised for the offence falling under the heinous categories. It has been further observed in **Bhajan Lal's** (supra) as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) “Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Hon'ble Supreme Court in Gian Singh vs. State of Punjab and another, (2012) 10 SCC 303, has further held as under:-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no

statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to

abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Evidently the offence alleged against the petitioners is under Section 306 IPC. Hon'ble Supreme Court in **Daxaben Versus State of Gujarat** 2022 SCC online SC 936 observed that the FIR under Section 306 of IPC (abetment of suicide) cannot be quashed under Section 482 Cr.P.C. on the basis of settlement as Section 306 falls in the category of heinous and serious offences which are considered as crime against society. Even otherwise, the allegations and counter allegations made are totally matter of evidence. As per the law settled by Hon'ble Supreme Court, there cannot be a straight jacket formula to be laid down for exercising power under Section 482 Cr.P.C. and the same would depend on the merits of each case.

Weighing the facts and circumstances of the case on the anvil of law settled, this Court finds that case in hand fails to qualify for invoking the inherent jurisdiction. Resultantly, the present petition being devoid of any merit is hereby dismissed.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

20.01.2023
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No