

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.259

CRM-M-52147-2022 (O&M)

Date of decision : 23.11.2023

Birjesh Kumar

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Ashish Gupta, Advocate, for the petitioner.

Mr. K.S. Thakur, AAG, Haryana

Ms. Shruti Rathour, Advocate for

Mr. Sumeet Jain, Advocate, for respondent No.2.

HARPREET KAUR JEEWAN, J. (Oral)

Prayer in the present petition filed under Section 482 of the Criminal Procedure Code, 1973 is for quashing of the FIR No.166 dated 27.12.2018, under Sections 323, 34, 406, 498-A, 506 IPC, registered at Police Station Women, West Gurugram, District Gurugram on the basis of compromise deed dated 04.07.2019 (Annexure P-2) executed between the parties.

2. Learned counsel for the petitioner has submitted that there was a matrimonial dispute between the parties due to which the present FIR was got registered against the petitioner at the instance of Monika Sharma-respondent No.2. However, with the intervention of the respectables and relatives, they have finally settled their matrimonial dispute and compromise deed dated 04.07.2019 (Annexure P-2) has been executed between the parties which has been duly signed by all the parties. The petitioner-Birjesh Kumar and respondent No.2-Monika Sharma have filed a joint

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Hindu Marriage Act, 1955 (Annexure P-3), in pursuance to the said compromise (Annexure P-2). The statements of the parties have been recorded for the first and second motion, on the basis of compromise (Annexure P-2). Respondent No.2-Monika Sharma does not want to take any legal action against the petitioner in the said FIR. As such, prayer is made to quash the said FIR alongwith all consequent proceedings.

3. On 12.09.2023, the following order was passed:-

“By way of the instant petition, the petitioner has sought the quashing of the FIR bearing No.166 dated 27.12.2018 registered at Police Station Women West Gurugram, under Sections 323, 406, 498-A and 506 read with Section 34 IPC, along with all the subsequent proceedings arising therefrom, while averring that the parties have arrived at an amicable settlement/compromise in respect of their dispute in the present case.

Reply submitted on behalf of respondent No.1-State (by way of the affidavit of the Assistant Commissioner of Police, Crime Against Women, Gurugram), is already available on the file and the same is taken on the record.

Learned counsel appearing for the petitioner, inter-alia, contends that the subject FIR had been got registered due to the dispute arisen out of some misunderstanding between the petitioner-husband and respondent No.2-wife but now, with the intervention of the respectables, the same stands settled/resolved amicably and they have already parted their ways by way of dissolution of their marriage vide the judgment and decree passed by the concerned Family Court, Gurugram (Annexure P-3).

Notice of motion.

Mr. Kirpal Singh Thakur, learned Assistant Advocate General, Haryana, who has appeared on behalf of respondent No.1 in this case in pursuance of the copy of the present petition having been sent to the respondent-State in advance, accepts the notice.

At this stage, Ms. Shruti Rathour, Advocate has put in appearance for Mr. Sumeet Jain, Advocate on behalf of respondent No.2 and has submitted his Power of Attorney in the Court today and the same is taken on the record. She accepts the notice on behalf of the said respondent and also admits the factum of the compromise having been arrived at between the parties.

Accordingly, the private parties are directed to appear before the Illaqa Magistrate/trial Court on 12.10.2023 for recording their statements in respect of the compromise stated to have been arrived at between them. The Illaqa Magistrate/trial Court shall submit the report on or before 23.11.2023 specifying therein the following:-

1. the number of the accused arraigned in the FIR and how many of them have appeared and have made statements qua the compromise;
2. whether any accused is absconding or has been declared PO/Proclaimed Person in this case;
3. the name(s) of the complainant and injured/ aggrieved and whether all of them have appeared and made their statements in support of the compromise;
4. the stage of the trial/proceedings;
5. whether the compromise is genuine, voluntary and has been arrived at between the parties out of their free will;

6. whether any other criminal case is pending against any of the accused.

The Illaqa Magistrate/trial Court is further directed to record the statement of the Investigating Officer regarding the number of the accused as well as of the victims/complainants/aggrieved persons in the subject FIR.

Report of Illaqa Magistrate/trial Court be awaited for the date fixed.”

4. As per reply dated 24.01.2023 filed by the State, it has been mentioned in para No.3 of the reply that no incriminating evidence came forth against Satpal (father-in-law of the complainant), Smt. Sheela (mother-in-law of the complainant), Harish and Devender (brother-in-laws of the complainant), Sunita (sister-in-law of the complainant), Daya Kishan, Hemant and Smt. Manju (all relative of the husband of the complainant), as such, these persons were found innocent and Section 34 IPC was deleted. However, final report under Section 173 (2) Cr.P.C. presented only against the petitioner before Area Magistrate, Gurugram on 21.01.2019 and the charges have been framed against the petitioner by the trial Court.

5. The report dated 21.10.2023 of the Dr. Tarun Kumar Verma, Judicial Magistrate, Ist Class, Gurugram through the District & Sessions Judge, Gurugram, has been received. As per said report, the statement of the complainant-Monika Sharma, statement of the petitioner-Birjesh Kumar and statement of HC-Karuna have been recorded. Copies of their statements have been duly annexed with the report. As per the said report, the compromise is genuine, voluntarily and without any coercion between the

parties. No other criminal case is pending against the petitioner and there is no other victim in the present FIR except the complainant-Monika Sharma whose statement was recorded by the Magistrate.

6. Hon'ble the Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and others 2007 (3) RCR (Criminal) 1052**, has held that the High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offences and quash the proceeding where the High Court is of the opinion that it is required to prevent the abuse of process of law or otherwise to secure the ends of justice.

7. Since, it was a matrimonial dispute which has been settled between the parties by way of resolving their differences and even as per the terms and conditions of the compromise, they have filed a joint petition under Section 13-B of the Hindu Marriage Act, 1955 for dissolution of their marriage. So in the interest of justice, it is a fit case for quashing of the FIR.

8. Consequently, the present petition is allowed and FIR No.166 dated 27.12.2018, under Sections 323, 34, 406, 498-A, 506 IPC, registered at Police Station Women, West Gurugram, District Gurugram and all the subsequent proceedings emanating therefrom are ordered to be quashed qua the petitioner.

9. Pending miscellaneous application(s), if any, also stands disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

23.11.2023

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No