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

CRM-M-50754-2022 (O&M)
Date of decision : 10.10.2023

SUNAYANA

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aman Joon, Advocate for
Mr. Sandeep Jasuja, Advocate for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. Ankur Pandey, Advocate for
Mr. Rhythem Bajaj, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

By way of present petition, the petitioner is seeking quashing of FIR No.18 dated 01.03.2016, registered for offences punishable under Sections 328/380/384/497/120-B IPC and Section 66-E of Information Technology Act, 2000, at Police Station City-II, Abohar (Annexure P-2) on the basis of compromise.

2. On 23.11.2022, the following order was passed :-

“The present petition has been moved invoking jurisdiction of this Court under Section 482 Cr.P.C. The petitioner is facing trial in FIR No.18 dated 01.03.2016, registered for offences punishable under Sections 328/380/384/497/120-B IPC and Section 66-E of Information Technology Act, 2000, at Police Station City-II, Abohar.

Learned counsel for the petitioner contends that the matter already stands compromised vide compromise dated 18.04.2019 (Annexure P-4).

Notice of motion for 12.04.2023.

On the asking of the Court, Mr. Madhur Sharma, AAG, Punjab accepts notice on behalf of respondent No.1-State. Mr. Rhythem Bajaj, Advocate appears and accepts notice on behalf of respondent No.2 and submits that though respondent No.2-complainant admits the fact of there being a compromise with the present petitioner, however, the petitioner has not entered into any compromise with other co-accused namely Sachin Sharma and Seema.

Counsel for the petitioner relies upon ***Lovely Salhotra & anr. Vs. State, NCT of Delhi (2018) 12 SCC 391*** to submit that in such circumstances partial quashing is permissible.

In view of the above, the parties, i.e. the petitioner as well as respondent No.2 are directed to appear before learned Duty Magistrate/Illaq Magistrate/trial Court on 02.12.2022. On their doing so, the learned Duty Magistrate/Illaq Magistrate/trial Court shall record their statements and furnish its report to this Court by the next date of hearing on the following aspects:-

1. Number of persons arrayed as accused in the FIR.
2. Whether any accused is proclaimed offender?
3. Whether the compromise is genuine, voluntary and without any coercion or undue influence?
4. Whether the accused persons are involved in any other case or not?
5. 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.

A copy of the report be also sent to the Registrar Judicial of this Court.

Needless to say that in case for any reason the statements are not recorded on the aforesaid date, the learned Illaq Magistrate/trial Court shall be at liberty to call the parties on any other date but not later than a week thereafter. ”

3. Pursuant to the aforesaid order, report from ASJ, Fazilka, dated 03.04.2023 has been received, which is taken on record. As per the report, the Trial Court has recorded as follows:-

“1. Initially, the FIR was registered against three accused namely Sachin Sharma, Sunayana and Seema but, during inquiry, accused Seema was declared innocent by the police however, during trial she has been summoned by this Court of face trial as additional accused under Section 319 Cr.P.C;

2. None of the accused is proclaimed offender in this case;

3. From the statements of parties and compromise placed on file by the parties as Exhibit PA, it appears that the compromise so arrived at between the parties i.e. Gourav Dhuria and Sunayana is genuine, voluntary and without any coercion or undue influence;

4. As per the statement of investigating officer and report so submitted by him, no other case has been registered against any of the accused;

5. As per the statement of investigating officer and report so submitted by him, there is only one victim/ complainant namely Gourav Dhuria.”

4. The aforesaid report reveals that there are three accused persons namely Sachin Sharma, Sunayana and Seema. However, the compromise has only been effected with accused-petitioner Sunayana.

5. Ld. Counsel appearing for respondent No.2 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.

6. Similarly Ld. State Counsel has stated no objection in case the FIR is quashed based upon the compromise.

7. I have heard Ld. Counsel for the parties and have carefully gone through the records of the case.

8. 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.

9. 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.

10. Since the parties are *ad idem* that the compromise/settlement has to be read strictly *inter se* between the parties to the present petition and the complainant wants to pursue prosecution of rest of accused, namely, Sachin Sharma and Seema and it is only Sunayana who has approached this Court by way of present petition, the present petition is being entertained and allowed *qua* Sunayana only.

11. The question raised by State counsel as to whether the FIR can be quashed in part or not already stands answered by Apex Court in '**Lovely Salhotra and another vs. State (NCT of Delhi)**' reported as **(2018) 12 SCC 391**, wherein it was observed as under:-

“xx xx xx

We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants – herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants - herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 – herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie.”

12. Consequently, the petition is allowed. FIR No.18 dated 01.03.2016, registered for offences punishable under Sections 328/380/384/497/120-B IPC and Section 66-E of Information Technology

Act, 2000, at Police Station City-II, Abohar (Annexure P-2) and all proceedings arising therefrom, are, hereby, quashed *qua* the present petitioner only.

October 10, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No