

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45257-2019 (O&M)

Date of decision:16.03.2023

Pooja Joshi

... Petitioner

Vs.

State of Punjab & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

Present: Mr. Abhay Kumar Sharma, Advocate for the petitioner.

Mr. Sanish Girdhar, DAG, Punjab.

Mr. Abhishek Sharma, Advocate for
Mr. Nikunj Dhawan, Advocate for respondent No.2.

...

MANJARI NEHRU KAUL, J.

The petitioner is seeking quashing of FIR No.129, dated 29.08.2019, under Sections 406/420 IPC and Section 24 of the Immigration Act, registered at Police Station Satnampura Phagwara, District Kapurthala (Annexure P-1) along with all consequential proceedings arising therefrom on the basis of compromise dated 14.10.2019 (Annexure P-2) effected between her and the complainant i.e. respondent No.2. Learned counsel for the petitioner submits that subsequent to the lodging of the FIR in question, with the intervention of the respectables, the parties have amicably resolved their dispute and decided to put to rest the instant dispute pending between them. Hence, continuation of criminal proceedings would be a futile exercise. Learned counsel appearing for respondent No.2 has not disputed the submissions made by the counsel for the petitioner and has not opposed his prayer for quashing of the FIR in question on the basis of the

compromise effected between the two of them.

Learned State counsel has, however, opposed the prayer made by learned counsel for the petitioner by urging that besides the petitioner, allegations were levelled against one other person i.e. Poonam. However, neither had she been impleaded as a party in the petition in hand nor any compromise had been effected between her and the complainant. While drawing the attention of this Court to the allegations levelled in the FIR in question at Annexure P-1, learned State counsel has submitted that infact the petitioner is the main accused who had lured the complainant to part with Rs.22 lakhs on the assurance that she would arrange for her son to travel to Canada on a work permit. Besides this, it was the petitioner, who had shown a copy of a fake visa on her phone to the complainant. Learned counsel submits that the co-accused, Poonam with whom no compromise has been effected had been sent to the house of the complainant by none other than the petitioner and it was at the instance of the petitioner that Rs.9.50 lakhs was given to the co-accused, Poonam.

Learned State counsel has submitted that no doubt in case the parties have amicably settled their dispute, an FIR can indeed be quashed. However, it would be a travesty of justice if the main accused like in the case in hand, i.e. the petitioner on account of a compromise effected by her with the complainant goes scot free, and on the other hand, co-accused, Poonam with whom no compromise has been arrived at and who admittedly has been attributed a minor role in the crime in question, would be left to face trial and other criminal proceedings on account of no compromise effected between her and the complainant. In support of his submissions,

learned State counsel has placed reliance upon a decision of this Court in **CRM-M-7450-2022 (Yatin @ Mithu and another Vs State of Haryana and another)** decided on 13.01.2023.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court finds substance in the submissions made by learned State counsel that it would be a travesty of justice in case the FIR is quashed qua the main accused, who has managed to enter into a compromise with the respondent/complainant, to the exclusion of co-accused, Poonam. No doubt, criminal proceedings can be quashed if the parties arrive at an amicable settlement even in case of non-compoundable offence which have a pre-dominant civil flavour or are private in nature, however, at the same time, this Court while exercising its inherent jurisdiction under Section 482 Cr.P.C. is expected to remain vigilant so as to ensure that the object behind Section 482 Cr.P.C. i.e. to prevent the abuse of the process of law or otherwise to secure the ends of justice, is not defeated, by mechanically giving effect to a compromise.

Coming to the case in hand, a perusal of the allegations levelled in the FIR clearly reveal that it was on an assurance given by the petitioner that the complainant gave a huge amount of money i.e. Rs.10 lakhs and also other relevant documents of his son, for getting a work permit for him in Canada. Not only this, it was the petitioner, who also showed the complainant a fake copy of the Canadian visa on her phone and further asked him to pay the balance amount out of the agreed amount of Rs.22 lakhs, for the purchase of air tickets for his son. Still further, co-accused,

Poonam, as per the allegations levelled in the FIR itself, was sent to the complainant by none other than the petitioner and it was at the instance of the petitioner that co-accused Poonam was given Rs.9.50 lakhs by the complainant. In view of the above allegations, it does not sit well with the prudence of this Court that how can the co-accused who has been attributed a minor role in comparison to the petitioner, be left to face trial just because she has not effected any compromise with the complainant.

This Court has no hesitation to observe that a danger runs in partial quashing of an FIR qua some of the accused on the basis of a compromise entered into by them with the complainant. There could be cases where the accused/offenders holding influential positions or being in a sound financial positions would manage to escape from the trial on the basis of the compromise effected while on the other hand, an accused, who may not be able to influence the complainant or induce him to effect a compromise would be left to face trial. This Court in the case of **Yatin @ Mithu (supra)**, while dealing with partial quashing of FIR has held as under:

“Another scenario could be and which has been coming to the notice of this Court is that an accused, who has been attributed the main role in the crime in question, has compromised the matter with the complainant, whereas the other accused named in the FIR and in some cases not even named but nominated pursuant to a disclosure statement and still further, attributed only minor role(s) in the crime in question had been left to face trial on account of no compromise effected between him/them and the complainant. Without doubt, this would run contrary to securing the ends of

justice and the spirit of compromise, and thereby rendering the social and legal purpose behind Section 482 Cr.PC nugatory.

Hon'ble Supreme Court in certain exceptional cases has partially quashed the FIR and other criminal proceedings with respect to some of the accused on the basis of a compromise effected between them and the complainant, to the exclusion of the other accused with whom no compromise was effected. However, it was done in the peculiar facts and circumstances of those cases and no general rule to that effect was laid down by the Hon'ble Supreme Court while doing so. There can also be no general principle that partial quashing of FIR or other criminal proceedings is not permitted at all. Each criminal case has its own distinct facts and it is only after considering all the relevant facts and circumstances that an appropriate decision can be arrived at as to whether or not the FIR and consequential criminal proceedings should be quashed partially. Every law derives its legitimacy from justice, and justice should be the end product. The power under Section 482 Cr.PC has to be exercised with circumspection and restraint, ever mindful of the social impact of such exercise of power.”

As a sequel to the above, this Court does not deem it appropriate to invoke its inherent powers vested under Section 482 Cr.P.C. for quashing the FIR in question only qua the petitioner on the basis of compromise (Annexure P-2). Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

16.03.2023

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |