

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

Date of decision : 05.07.2023

- 1. CRM-M-57878-2022**
- 2. CRM-M-58068-2022**

SHAIFI SHARMA @ SHAFFY SHARMA

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Anshul Sharma, Advocate for
Mr. G.S. Madaan, Advocate for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab for respondent No.1.

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

PANKAJ JAIN, J. (ORAL)

The petitioner (in CRM-M No.57878 of 2022) is seeking quashing of FIR No.59, dated 18.11.2016 registered for the offences punishable under Sections 323, 325, Sections 148, 149 (subsequently deleted) and 34 of IPC (added later on), at Police Station Garhdiwala, District Hoshiarpur (Annexure P-1) on the basis of compromise. Further by way of CRM-M No.58068 of 2022, the petitioner prays for quashing of order dated 30.09.2019 (Annexure P-7) whereby he has been declared Proclaimed Person in the aforesaid FIR.

2. On 13.12.2022, the following order was passed :-

CRM-M-57878-2022

The petitioner through instant petition, on the basis of compromise is seeking quashing of FIR No.59 dated 18.11.2016

registered at Police Station Garhdiwala, District Hoshiarpur, under Sections 323, 325 Sections 148, 149 (subsequently deleted) and 34 of IPC (added later on).

Notice of motion.

On the asking of Court, Mr. Amish Sharma, AAG, Punjab and Mr. B. K. Gupta, Advocate accept notice on behalf of respondent No. 1 State and respondent No. 2 respectively.

Parties may appear before learned trial Court/Illaqa Magistrate concerned on 30.01.2023 or any other date convenient to said Court and get their statements recorded with regard to compromise. The original compromise shall be produced before the said court. In the event of their statements being recorded, the Court will send copies of same to this Court before next date of hearing alongwith its report :

- i) regarding genuineness and voluntary nature of compromise ;
- ii) whether all accused/petitioners are appearing before the Court or are on bail; and
- iii) whether any other proceeding is pending against the accused/petitioner.
- iv) Whether any accused has been declared proclaimed offender.

Adjourned to 10.02.2023.

CRM-M-58068-2022

The parties have compromised the matter and has filed afore-stated petition seeking quashing of FIR on the basis of compromise. The petitioner is stated to be out of country. The petitioner has been declared Proclaimed Person vide order dated 30.09.2019 (Annexure P-7). The petitioner is seeking quashing of order dated 30.09.2019 besides setting aside of impugned FIR. The operation of impugned order dated 30.09.2019 shall remain stayed till further orders.

The petitioner shall deposits costs of Rs.25,000/- in favour of Director, PGI Poor Patient Fund, Chandigarh.

A photocopy of this order be placed on the connected case file.

3. Pursuant to the aforesaid order, report from JMIC, Dasuya, District Hoshiarpur dated 06.02.2023 has been received, which is taken on record. As per the report, the Trial Court has recorded as follows:-

“i) regarding genuineness and voluntary nature of compromise.

The parties have arrived at compromise without any undue influence or coercion.

ii) whether all accused/petitioners are appearing before the Court or are on bail.

The other accused Raj Kumar acquitted vide judgment dated 23.09.2022 passed by the court of undersigned and accused/petitioner Shaifi Sharma @ Shaffy Sharma is already declared proclaimed person vide order dated 30.09.2019 passed by Sh. Varinder Kumar the then Ld. JMIC, Dasuya.

iii) whether any other proceeding is pending against the accused/petitioner.

As per report of SHO, PS Garhdiwala, no other criminal case is pending against the accused/petitioner.

iv) Whether any accused has been declared proclaimed offender.

The petitioner/accused was declared as proclaimed person vide order dated 30.09.2019 passed by Sh.Varinder Kumar the then Ld. JMIC, Dasuya.”

4. 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 petitioners including order Annexure P-7 are quashed.

5. Similarly Ld. State Counsel has stated no objection in case the FIR and order Annexure P-7 are quashed based upon the compromise.

6. I have heard Ld. Counsel for the parties and have carefully

gone through the records of the case.

7. 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.

8. 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.

9. Consequently, the petition (CRM-M No.57878-2022) is allowed. FIR No.59, dated 18.11.2016 registered for the offences

punishable under Sections 323, 325, Sections 148, 149 (subsequently deleted) and 34 of IPC (added later on), at Police Station Garhdiwala, District Hoshiarpur (Annexure P-1) and all proceedings arising therefrom, are, hereby, quashed *qua* the petitioner.

10. In view the fact that since the FIR stands quashed in Para No.9 *ibid*, order dated 30.09.2019 (Annexure P-7) declaring the petitioner to be a Proclaimed Person, is hereby set aside subject to payment of costs of Rs.25,000/- to be deposited in favour of Director, PGI Poor Patient Welfare Fund, Chandigarh.

11. Accordingly, petition bearing CRM-M No.58068 of 2022 is also allowed in aforesaid terms.

12. A copy of this order be kept on the file of other connected case.

July 05, 2023
Dpr

(Pankaj Jain)
Judge

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