

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

238

CRM-M-4305-2021

Date of Decision: 03.04.2024

Ashish Kumar Sharma

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Naveen Batra, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab
for respondent No. 1-State.

NIDHI GUPTA, J. (ORAL)

The petitioner who is the husband of respondent No. 2-complainant has filed the present petition under Section 482 Cr.P.C., for quashing of FIR No. 28 dated 05.03.2017 (Annexure P-1) registered under Section 498-A IPC at Police Station Nangal, District Rupnagar and all the consequential proceedings arising therefrom, on the basis of compromise dated 09.12.2020 (Annexure P-2), arrived at between the parties.

On 29.01.2021, while issuing notice of motion in the matter, a co-ordinate Bench of this Court directed the parties to appear before the learned Illaqa Magistrate/trial Court/Duty Magistrate for recording their statements qua genuineness of compromise.

Pursuant to the order dated 29.01.2021 passed by a

co-ordinate Bench of this Court, the parties appeared before the learned Sub Divisional Judicial Magistrate, Sri Anandpur Sahib to get their statements recorded. Learned Sub Divisional Judicial Magistrate, Sri Anandpur Sahib, has submitted his report along with statements of the parties vide letter dated 08.02.2021 duly forwarded by the learned District and Sessions Judge, Rupnagar.

A perusal of the above said report would show that the petitioner and respondent No. 2 have appeared and suffered statements with respect to the compromise, which have been found to be genuine, voluntary and without any coercion or undue influence. It has further been reported that petitioner is the only accused in the present case and he has never been declared as proclaimed offender.

Thereafter, when this matter was listed for hearing on 03.11.2023, following order was passed by a co-ordinate Bench of this Court:-

“The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.28 dated 05.03.2017 under Sections 498-A of Indian Penal Code, 1860 (IPC), registered at Police Station Nangal, District Rupnagar (Annexure P-1), and all subsequent proceedings arising out of the said FIR, on the basis of compromise dated 09.12.2020 (Annexure P-2).

Vide order dated 29.01.2021 the parties were directed to appear before the concerned Trial Court/Illaq Magistrate/Duty Magistrate for recording of their statements. Pursuant to the said order, a report dated 08.02.2021 of the Sub Divisional Judicial Magistrate, Sri Anandpur Sahib has been received by this Court wherein the statement of the complainant- respondent No.2 - Kanchan Sharma - has also been recorded.

Learned counsel for the petitioner has also handed over a copy of the order dated 18.03.2021 passed on the petition under Section 13-B of the Hindu Marriage Act, 1955 for dissolution of marriage by way of decree of divorce by mutual consent. Learned counsel has also pointed out that

an amount of Rs.15,00,000/- also stands paid to the complainant-respondent No.2.

Before this Court, the complainant-respondent No.2 has not put in appearance despite service. The case has been adjourned on numerous dates only to await the appearance of respondent No.2.

Let bailable warrants be issued against respondent No.2 through the Chief Judicial Magistrate concerned, returnable 15.12.2023. ”

On the next date of hearing i.e. 18.03.2024, when this case was listed for hearing before this Court, learned counsel for the State seeks time to get necessary instruction qua issuance of bailable warrants against respondent No. 2.

Today, on instructions from ASI Tajinder Singh, learned counsel for the State informs that bailable warrants of respondent No. 2 have not been received by the concerned police station.

Learned counsel for the petitioner, *inter alia*, submits that the present FIR emanates from the matrimonial dispute between the parties. Marriage of the petitioner with complainant/respondent No.2 was solemnized on 19.04.2014 and one child was born out of the said wedlock on 28.05.2015, who is currently in the care and custody of respondent No. 2. Due to temperamental differences, the parties could not cohabit together and started residing separately since October, 2016. Thereafter, better sense has prevailed between the parties and in order to live peacefully, parties have entered into a compromise dated 09.12.2020 (Annexure P-2), according to which, both the parties have agreed not to proceed further with the FIR in question. Further, it is submitted that the parties have also been granted decree of divorce by way of mutual consent under Section 13-B of the Hindu Marriage Act, 1955, vide order

dated 18.03.2021 and the petitioner has also paid the agreed amount of Rs.15,00,000/- to respondent No. 2-complainant in terms of condition No. 9 of the compromise (Annexure P-2).

Learned counsel submits that notice in the matter was issued as far as back on 29.01.2021 and thereafter, the case has been adjourned for numerous dates only to await the appearance of respondent No. 2. Therefore, it can safely be presumed that complainant/respondent No. 2 is not interested in contesting the present petition.

Learned State counsel has stated that he has 'no objection' in case the FIR is quashed on the basis of compromise qua the petitioner.

This Court has heard the learned counsel for the parties and has perused the file.

After perusing the report submitted by the learned learned Sub Divisional Judicial Magistrate, Sri Anandpur Sahib, this Court finds that the matter has been settled between the petitioner and respondent No. 2. Petitioner and respondent No. 2 have already been granted decree of divorce by way of mutual consent and the petitioner had also paid the entire amount of Rs.15,00,000/- to the complainant/respondent No. 2 in terms of condition No. 9 of the compromise dated 09.12.2020 (Annexure P-2). Since the matter has been settled and the parties have decided to live in peace, this Court feels that in order to secure the ends of justice, the criminal proceedings deserve to be quashed.

At this stage, reference may be made to the judgment of ***“Ruchi Agarwal Vs. Amit Kumar Agrawal” Law Finder Doc ID # 78949; and Mohd. Shamim v Smt. Nahid Begum, Law Finder Doc Id #***

81379, wherein it has been held that in a criminal/civil litigation between the husband and wife, once the parties have entered into a compromise and have sought divorce by mutual consent, if the wife does not withdraw FIR under Sections 498-A and 506 IPC then it is clear that the wife wants to harass the husband even after getting the relief and in such cases FIR ought to be quashed.

In the said case **Ruchi Agarwal** (supra), the wife filed SLP before the Hon'ble Supreme Court challenging the order of the Hon'ble Uttaranchal High Court whereby criminal complaint filed by the wife against the respondent husband was quashed. Facts were similar therein as the appellant-wife had resiled from compromise. In these circumstances, the Hon'ble Supreme Court quashed the FIR registered under Sections 498A, 323 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act. Para 8 of said judgment reads as under:-

“8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No. Cr. No. 224/2003 registered in Police Station, Bilaspur, (Distt. Rampur) filed under sections 498A, 323 and 506 Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of”.

In **Mohd. Shamim** (supra) Hon'ble Supreme Court held as under: -

“A. Criminal Procedure Code, Section 320-Indian Penal

Code, Section 406 and 498A - Compounding of offence - FIR under Sections 498A, 406 Indian Penal Code-Wife entering into settlement at intervention of court and accepting Rs. 2.25 lacs from husband - Wife backed out - FIR quashed - In view of conduct of wife, continuance of proceedings would be abuse of process of Court.

B. Criminal Procedure Code, Sections 320 and 482 - Indian Penal Code, Sections 498A and 406 - Compounding of offence-FIR under Sections 498A, 406 Indian Penal Code-Parties entering into settlement at the intervention of trial Judge- Wife accepted Rs. 2.25 lacs and another sum of 50,000 to be paid at the time of quashing the FIR- Petition for quashing of FIR-Wife backed out and stated agreement and affidavit were got signed by misrepresentation - FIR quashed - In view of conduct of wife continuance of Criminal proceedings would be an abuse of process of the Court. 2004(4) RCR (Criminal) 949 (SC) relied”.

As per the Full Bench judgment of this Court in **“Kulwinder Singh and others Vs State of Punjab”, 2007 (3) RCR (Criminal) 1052**, it is held that High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the proceedings where the High Court is of the opinion that the same is required to prevent the abuse of the process of law or otherwise to secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

Hon'ble Apex Court in the case of **“Gian Singh Vs. State of Punjab and another”, 2012 (4) RCR (Criminal) 543**, had also observed that in order to secure the ends of justice or to prevent the abuse of process of Court, inherent power can be used by this Court to quash

criminal proceedings in which a compromise has been effected. The relevant portion of para 57 of the said judgment is reproduced here-in-below:-

“57. 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 view of what has been discussed here-in-above, this petition is allowed and FIR No. 28 dated 05.03.2017 (Annexure P-1) registered under Section 498-A IPC at Police Station Nangal, District Rupnagar and all the consequential proceedings arising therefrom, on the basis of compromise dated 09.12.2020 (Annexure P-2), are ordered to be quashed qua the petitioner.

03.04.2024

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**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No