

310

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5209-2023 (O&M)
DATE OF DECISION : 18.03.2024

AMANDEEP @ AMAN

... PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Paras Sharma, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

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

* * *

HARPREET KAUR JEEWAN, J. (ORAL)

1. The petitioner is seeking to quash the FIR No. 141 dated 24.02.2022 under Section 363 and 366 of IPC (Sections 366, 376 (2)(n) and 506 of IPC and Section 6 of POCSO Act have been framed vide order dated 02.06.2022 passed by learned Judge, Special Court, Kurukshetra) registered at Police Station Ladwa, District Kurukshetra (Annexure P-1) and all the subsequent proceedings arising therefrom on the basis of compromise.

2. Learned counsel for the petitioner contends that the victim has executed an affidavit dated 03.01.2023 (Annexure P-3) to the effect that she had been living under the care and custody of her grand-father as her father had already expired. She has now performed marriage with her respective spouse and she is living happy married life. The enmity which may arise between the parties due to conviction of the petitioner may affect her matrimonial life. As such, the deponent and her grand-father has

compromised the matter with the accused/petitioner.

3. Learned counsel for the petitioner *inter alia* contends that since the matter has been compromised. As such, the present petition be quashed.

4. Learned State counsel has opposed the petition and referring to the Status report submitted that during the investigation, the prosecutrix was recovered on 27.02.2022 whereas she went missing on 21.02.2022. After her recovery, the statement of the victim under Section 164 Cr.P.C. (Annexure R-1) was recorded and her medical examination dated 27.02.2022 (Annexure R-2) was conducted. Samples were sent for examination to Forensic Science Laboratory, Madhuban. The DNA matching was also got done as per the reports, Annexures R-2 to R-4.

5. I have considered the aforesaid contentions.

6. The FIR was registered under Sections 363, 366 IPC and later on the offence under Section 366-A and Section 6 of Protection of Children from Sexual Offences Act was added. The FIR was registered at the instance of the grand-father of the prosecutrix-victim with the allegations that the petitioner had kidnapped the victim from Kalpana Chawla Hospital, Karnal where she was present along with her grand-mother and she was being threatened to be killed. The age of the victim was 17 years at the time of alleged occurrence and the matter was reported to the police when she was found missing from the hospital.

7. As per the FSL Report (Annexure R-3), human semen was detected on the clothes of the victim. As per the report of Forensic Science Laboratory, Madhuban (Annexure R-4) DNA profile of the source item-swab is matching with the DNA profile of the blood sample of the accused.

As per the statement of the prosecutrix recorded during trial (Annexure R-

5), she has levelled allegations against the petitioner for forcibly taking her and kidnapping her to his house and keeping her in a temple for 04 days. There are also allegations against the petitioner in the said statement that during this period the petitioner had been forcibly committing wrong act with the prosecutrix.

8. The co-ordinate Bench while dealing with the question of quashing of FIR, on the basis of compromise in the matter where Section 8 of the POSCO in Surinder Kumar vs. State of Haryana and others (CRM-M-3397-2021), decided on 11.05.2022, has held that the offences under the Act being heinous in nature will fall under the exceptions as carved out by Hon'ble the Supreme Court in the case of State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688. While dealing with the scope of Section 482 of the Code and referring the various decisions by Hon'ble the Apex Court, following observations were made by the co-ordinate Bench:-

“Statement of objects and reasons of the Act recognizes duty casted upon the State to direct its policy towards securing that the tender of age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity as directed by Article 39. The statement further declares, the enforcement of right of all children to security, safety and protection from sexual abuse and exploitation-as an object of the Act. Preamble of the Act declares it to be the Act to protect children from offences of sexual assault, sexual harassment and pornography. It is said to have been enacted with reference to Article 15 (3) of the

*Constitution of India. The Preamble of the Act further declares sexual exploitation and sexual abuse of children as a heinous crime which need to be effectively addressed. While noticing this the Apex Court in the case of **Eera Vs. State (NCT of Delhi) (2017) 15 SCC 133**, observed that:*

“The purpose of referring to the Statement of Objects and Reasons and the

Preamble of the Pocso Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the Pocso Act.”

Further in Crl.A.No.263/2022 the Apex Court vide order dated 21.2.2022 deprecated practice of granting bail in the offences punishable under the Act while relying upon grounds namely 'there was a love affair'.

It is further apposite to note here that the scope of exercise of power under Section 482 Cr.P.C is no more res-integra. In the case of State of Madhya Pradesh Vs. Laxmi Narayan and others (2019) 5 SCC 688, the Apex Court after considering various precedents including Gyan Singh Vs. State of Punjab (2012) 10 SCC 303 and Narender Vs. State of Punjab (2014) 6 SCC 466 held that:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between

the victim and the offender;

iv) offences under section 307 IPC and the Arms Act etc. would fall in the

category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on

the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

9. Recently the Apex Court in **Ramgopal and another Vs. The State of Madhya Pradesh in Criminal Appeal No. 1489 of 2012** while reiterating the law laid down in **State of Madhya Pradesh Vs. Laxmi Narayan and others's case** (supra) cautioned the Courts exercising plenary jurisdiction observing that:-

“We thus sum-up and hold that as opposed to Section 320 Cr.P.C where the Court is squarely guided by the compromise between the parties in respect to offences 'compoundable' within the statutory framework, the extra ordinary power enjoined upon a High Court under Section 482 Cr.P.C or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.” (emphasis supplied)

Keeping in view the aforesaid settled proposition of law, in the considered opinion of the Court the offences under the Act being heinous in nature will fall under the

*exceptions as carved out by the Supreme Court in the case of **State of Madhya Pradesh Vs. Laxmi Narayan and others** (supra)”*

10. The co-ordinate Bench further held that the powers granted under Section 482 of the Code cannot be exercised to defeat the purpose of the POCSO Act which has been enacted in discharge of constitutional mandate, as well as obligation arising out of the International Conventions.

11. In view of the above circumstances, it is not a fit case for exercising the jurisdiction under Section 482 Cr.P.C. whereas the statement of the prosecutrix has already been examined.

12. Consequently, the petition stands dismissed.

18.03.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No