

2024:PHHC:077295



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

255

CRM-M-11046-2024 (O&M)
Date of Decision: 29.05.2024

Shamshad ... Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ishan Gupta, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

Ms. Palvi, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. by the petitioner seeking quashing of FIR No. 04 dated 11.01.2024, registered under Sections 376(2)(n) and 328 of IPC at Police Station City-I Malerkotla, District Malerkotla, on the basis of compromise dated 15.01.2024 (Annexure P-2).
2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant "T" (*name withheld*) alleging therein that the she was a married woman, aged about 23 years. Her relations were not cordial with her husband. She alleged that the

petitioner, who was her brother-in-law (*Nandoi*), had committed rape upon her by administering her some intoxicating substance by mixing the same in cold drink. He had also recorded a video of the said act and threatened the victim that he would upload the same on social sites and on that pretext, he repeatedly committed rape upon the victim. After registration of FIR, investigation proceedings were initiated.

3. The present petition has been filed by the petitioner on the grounds that a compromise has been effected between the respondent No.2 and himself. It is submitted by learned counsel for the petitioner that he has been falsely implicated in this case. The complainant has sworn/effected an affidavit/compromise, wherein she has stated that the FIR was registered due to some misunderstanding. The petitioner and the complainant has buried their dispute and are living peacefully. No useful purpose would be served by keeping the criminal proceedings pending against the petitioner. Therefore, it is urged that the petition deserves to be allowed.

4. It will not be out of place to mention here that learned counsel for respondent No.2 has also affirmed the fact that the compromise has been effected between the respondent No.2. He has submitted that the respondent No. 2 has no objection, if the FIR is quashed.

5. Learned State counsel, on the other hand, has vehemently opposed the prayer made by the petitioner by arguing that there are serious allegations against the petitioner. The offence for which he has been booked falls within the category of heinous crime. The compromise between the parties is not permissible in law. By submitting that the petition is misconceived and cannot be allowed, he has urged that the same is liable to be dismissed.

6. It will also be relevant to mention here that vide order dated 13.03.2024, the parties were directed to appear before the learned trial Court on 06.04.2024 for recording their statements with regard to the compromise. The trial Court was directed to submit report in the matter. A report has been submitted by the trial Court as per which the statements of the petitioner, respondent No.2 as well as Investigating Officer ASI Baljinder Kaur had been recorded on 04.04.2024. As per the trial Court, the statements have been recorded without any pressure, undue influence and coercion and the parties have voluntarily recorded their statements. It is reported by the trial Court that the compromise effected between the parties is genuine and the petitioner has not been declared a proclaimed offender/person.

7. There are catena of judgments of Hon'ble Supreme Court whereby, parameters governing the exercise of jurisdiction of Section 482 of the Code of Criminal Procedure are well settled. In a celebrated judgment cited as *State of Haryana Vs. Bhajan Lal, 1992 SUPP (1) SCC 335*, the Hon'ble Supreme Court has discussed different categories of cases wherein, the power under Section 482 Cr.P.C. could be exercised either to prevent abuse of process of law or otherwise to secure the ends of justice, while observing that it might not be possible to lay down any precise, clearly defined, sufficiently channelized, inflexible guidelines or rigid formulae and to give an exhaustive list or myriad kind of cases where such powers should be exercised. The following principles have been culled out:-

“102 (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police

officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. Reference can also be made to *Narinder Singh and Ors. Vs. State of Punjab and another, (2014) 6 SCC 466*, wherein the Hon’ble Supreme Court had observed that while exercising power under Section 482 of Cr.P.C., the High Court has to examine as to whether the possibility of conviction of accused is remote and bleak and continuation of criminal case would put him into great oppression and prejudice and injustice would be caused to him by not quashing criminal case.

9. It is also considered to be important to mention here that the inherent power given to High Court under Section 482 of Cr.P.C. is with the purpose and object of advancement of justice. The touchstone for exercising

that power would be to secure the ends of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered in accordance with the law enacted by the Legislature. The concept of justice is elastic and imperceptible. There can be no hard and fast line constricting the power of the High Court to do substantial justice. The restrictive construction of inherent powers under Section 482 of Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may instead lead to grave injustice. Nonetheless such powers of wide amplitude ought to be exercised carefully in the context of quashing proceedings, bearing in mind, the nature and effect of the offence on the consciousness of the society; the seriousness of the injury, if any; voluntary nature of compromise between the accused and the victim; and conduct of the accused persons, prior to and after the occurrence of the purported offence or other relevant considerations. Reference in this regard can be made to a recent judgment of High Court of Kerala pronounced on 16.11.2023 in CrI. MC No.7497 of 2023, ***Kahar and others v. State of Kerala and others***, wherein it was observed that the viability of quashing a criminal proceeding on the ground that the accused and victim of sexual assault settles the dispute, resolves ultimately around the facts and circumstances of each case and no straitjacket formula can be formulated. It was further observed that where the High Court has such facts on record which clearly exhibit that the criminal prosecution involving non-compoundable sexual offences against women and children will result in greater injustice to the victim, its closure would only promote her well being, and the possibility of a conviction is remote, it can indubitably evaluate the consequential effects of the offence beyond the body of an

individual and thereafter adopt a pragmatic approach and very well decide to quash such proceeding upon a compromise between the accused and the victim after taking into account all relevant facts.

10. On considering the peculiar facts and circumstances of the case as noted above, while keeping in view the well established position of law coupled with the reasons aforementioned and the fact that the matter stands amicably settled between the parties and they have recorded their statements before the trial Court in support of the compromise, I am of the considered opinion that it is a fit case for exercising inherent jurisdiction of this Court under Section 482 of the Code, so as to secure the ends of justice and the quashing of FIR would be for the welfare of the parties.

11. Accordingly, the present petition is allowed and FIR No. 04 dated 11.01.2024, registered under Sections 376(2)(n) and 328 of IPC at Police Station City-I Malerkotla, District Malerkotla along with all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner.

29.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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