

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-13183-2021 (O&M)
Date of order: 08.04.2024

Jitender Sharma

.....Petitioner(s)

Vs.

State of Union Territory Chandigarh & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.AkshayBhan,Senior Advocate with
Mr. Aman Bansal, Advocate
Mr. HPS Sandhu, Advocate
for the petitioner.

Mr. Manish Bansal, PP UT Chd. with
Mr. Ankush Singla, Advocate

Ms. Kulwinder Pal Kaur Gill, Advocate for
Mr. Puneet Sharma, Advocate
for respondent No.2.

Nidhi Gupta, J.

The prayer in this petition is for quashing of FIR No.10 dated 08.02.2021 registered under Section 376(2)(n) IPC at Police station North, District Chandigarh (Annexure P1); and all consequential proceedings arising therefrom on the basis of compromise dated 10.03.2021 (Annexure P2) and affidavit of complainant/respondent No.2 dated 06.03.2021 (Annexure P3) and affidavit dated 10.03.2021 (Annexure P4).

2. Vide order dated 23.03.2021, a Co-ordinate Bench of this Court had directed the parties to appear before Illaqa Magistrate for getting their statements recorded in terms of certain parameters given in

the aforesaid order dated 23.03.2021 with regard to the compromise dated 10.03.2021(Annexure P-2).

3. In terms of the order dated 23.03.2021, passed by a Coordinate Bench of this Court, parties have appeared before the Court of learned Judicial Magistrate, 1st Class, Chandigarh, and as per his report dated 02.04.2021 submitted to this Court, both the parties have got recorded their respective statements in Court.

4. A perusal of the above said report would show that the petitioner and respondent No.2 have appeared and submitted statements with respect to the compromise, which have been found to be voluntary, genuine, and out of free will.

5. At this stage, Ld. Counsel for the respondent-UT has vehemently contested the present petition on the ground that the petitioner has been accused of heinous offence and the same cannot be quashed on the basis of compromise. Learned State Counsel has vehemently opposed the prayer made on behalf of the petitioner and submitted that very serious allegations have been made by the complainant in the present FIR. It is contended that an offence under Section 376 IPC is against society and is not private in nature, and therefore, the same cannot be quashed on the basis of compromise. In support of his contentions, learned counsel relies upon judgment of the Hon'ble Supreme Court in **"The State of Madhya Pradesh Vs. Laxmi Narayan & Others"** Criminal Appeal No.349 of 2019 decided on **05.03.2019**. Learned counsel submits that in the said case, Hon'ble Supreme Court has categorically held that FIR cannot be quashed in those

prosecutions which involved heinous and serious offences. Relevant part of said judgment is reproduced hereinbelow:-

“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 impact 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.”

6. Ld. State Counsel on instructions from HC Gurwinder Singh further informs that cancellation report was filed before the learned trial Court however, learned trial Court has not accepted the same and has ordered for re-investigation. Hence, at present the matter is under re-investigation.

7. Per contra, Learned Senior Counsel appearing on behalf of the petitioner submits that the present FIR was registered due to some misunderstanding between the parties. It is submitted that no doubt offence under section 376 falls under the category of heinous offences and it is for this very reason that a Co-ordinate Bench of this Court vide order dated 15.07.2021, had called for the MLR in the present case to verify the prima facie truth of the allegations made by the complainant. The medical evidence has been found to be contrary to the allegations made.

8. In this regard, learned Senior Counsel refers to the MLR dated 08.02.2021 (Annexure R1) wherein it is recorded that *“History of relationship with businessman Jitender Sharma resident of Machiwara, Ludhiana for the last 3 years with consent on the pretext of job. Last incident occurred today morning.”* Learned Senior Counsel contends that accordingly, as per the case of the complainant herself, she has been in consensual relationship with the petitioner for the last 3 years and the last incident occurred on the date of registration of the FIR itself i.e. on 8.2.2021. Learned Senior Counsel further refers to MLR (at Page 37 of the paper book) to submit that *“No external mark of injury seen at the time of*

examination”. Accordingly, it is clear that no force was used with the complainant.

9. Ld. Senior Counsel further argues that the fact that the FIR came to be registered due to a misunderstanding between the parties is evident from the fact that complainant had lodged the FIR on 08.02.2021 and within a month thereafter, she has entered into compromise dated 10.03.2021 (Annexure P-2) with the petitioner. It is submitted that on this date, it has been three years since the compromise between the parties, and the complainant has not resiled from the same or disputed the same till date. It is reiterated that 3-and-a-half years have elapsed and the complainant still stands by the compromise and has not resiled from her stand. It accordingly shows that the compromise in the present case is voluntary in nature, as also without any undue influence.

10. Ld. Counsel for the complainant admits the above said facts submitted by Id. Senior Counsel on behalf of the petitioner, to be true.

11. This Court has heard the learned counsel for the parties and has perused the case file in detail.

12. The Id. State counsel in support of submissions has relied upon landmark judgement of the Hon’ble Supreme Court in the case of **Laxmi Narayan (Supra)**. However, the Hon’ble Supreme Court in a subsequent decision rendered on similar facts and circumstances in the case of **“Kapil Gupta Vs. State of NCT of Delhi & Another” Law Finder Doc ID # 2024972 decided on 10.8.2022**, has held as under:-

“6. It further appears that subsequently, in the case arising out of Section 376 of the IPC, that is, FIR No.569 of 2020, the

matter was amicably settled and therefore, the petition for quashing the proceedings under section 482 of the Cr.P.C., 1973 came to be filed. By the impugned order, the High Court has dismissed the said petition.

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11. When the matter was called out in the afternoon session, learned ASG as well as Mr. Rauf Rahim informed us that they had spoken to Respondent No.2. They stated that from the conversation they had with Respondent No.2, it was apparent that the consent given by Respondent No.2 was voluntarily and without any coercion and duress. It was informed that the Respondent No.2, in order to live in peace, wants to bring an end to the criminal proceedings.

*12. No doubt that the learned ASG is right in relying on various judgments of this Court which reiterate the legal position that in heinous and serious offences like murder or rape, the Court should not quash the proceedings. It will be relevant to refer to paragraph 29.5 to 29.7 of the judgment of this Court in the case of **Narender Singh v. State of Punjab (2014) 6 SCC 466**, which read thus:*

"29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. 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 proving 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. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage

before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

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16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since the respondent No.2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts."

(Emphasis mine)

13. Reference may also be made to another judgment in **"Ramawatar Vs. State of Madhya Pradesh" Criminal Appeal No.1393 of 2011 decided on 25.10.2021; Law Finder Doc Id # 1900370**, wherein a 3-Judge Bench of the Hon'ble Supreme Court has held as under:-

"Constitution of India, 1950, Article 142 - Indian Penal Code, 1860, Section 34 - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989, Section 3(1)(x) - FIR - Whether jurisdiction of Supreme Court under Article 142 of the Constitution can be invoked for quashing of criminal proceedings arising out of a `non-compoundable offence? - Held, yes - Powers of Supreme Court under Article 142 can be invoked to quash criminal proceeding on basis of a voluntary compromise between complainant/victim and accused - Hence, criminal proceedings liable to be quashed.

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9. Having heard learned Counsel for the parties at some length, we are of the opinion that two questions fall for our consideration in the present appeal. First, whether the jurisdiction of this Court under Article 142 of the Constitution can be invoked for quashing of criminal proceedings arising out of a 'non-compoundable offence? If yes, then whether the power to quash proceedings can be extended to offences arising out of special statutes such as the SC/ST Act?

10. So far as the first question is concerned, it would be *ad rem* to outrightly refer to the recent decision of this Court in the case of **Ramgopal & Anr v. The State of Madhya Pradesh, Criminal Appeal No.1489 of 2012** wherein, a two-Judge Bench of this Court consisting of two of us (N.V. Ramana, CJI & Surya Kant, J) was confronted with an identical question. Answering in the affirmative, it has been clarified that the jurisdiction of a Court under Section 320 Cr.P.C cannot be construed as a proscription against the invocation of inherent powers vested in this Court under Article 142 of the Constitution nor on the powers of the High Courts under Section 482 Cr.P.C. It was further held that the touchstone for exercising the extraordinary powers under Article 142 or Section 482 Cr.P.C., would be to do complete justice. Therefore, this Court or the High Court, as the case may be, after having given due regard to the nature of the offence and the fact that the victim/complainant has willingly entered into a settlement/compromise, can quash proceedings in exercise of their respective constitutional/inherent powers.”

14. Thus, even in an offence committed under a Special Act, it was held that the FIR can be quashed on the basis of a compromise.

15. In the facts and circumstances of the present case, it will be apposite to refer to judgment of Bombay High Court in **“Ganesh Shankar Pilane Vs. The State of Maharashtra & Another” Writ Petition No.272 of 2022 decided on 11.03.2022**, wherein it has been held that:-

“11. True it is that, bare perusal of the first information report and the material reflected in the charge-sheet show that a serious offence is committed by the Petitioner. The statement of witnesses and medical officer also supports the case of Respondent No. 2, at the same time, this Court cannot loose sight of the fact that the victim had reiterated her free will and prosecuting her academic career and concentrate her studies. It is stated in the affidavit of Respondent No. 2 that in her desire to prosecute the academic course and further studies, the pendency of the criminal proceedings and trial would be an hurdle. It seems that the Respondent No. 2 is adopting an, approach of leaving behind her baggage of past and proceeding further in the life concentrating on the positive side for better future. In view of no objection for quashing of the report and proceedings by Respondent No. 2, it can safely be said that in the prosecution if permitted to continue there is hardly any chance of conviction being recorded against the Petitioner and the continuity of such prosecution would be nothing but futile exercise.”

16. The present case stands on a better footing as unlike the aforesaid case there is no medical evidence herein, and even charge-sheet has not been filed and the case is at its very initial stage.

17. Thus, in view of the case law noticed here in above, learned counsel for the State can derive no benefit from the relied upon judgment in case of **Laxmi Narayan (supra)**.

18. After perusing the report submitted by the Illaqa Magistrate, this Court finds that the matter has been amicably settled between the petitioner and the complainant. 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. It is also relevant to notice that the respondent-State had itself filed a cancellation report in the matter.

19. 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.

20. 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 hereinbelow:-

“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.”

21. In view of what has been discussed hereinabove, this petition is **allowed**; and FIR No.10 dated 08.02.2021 registered under Section 376(2)(n) IPC at Police station North, District Chandigarh (Annexure P1); **and** all consequential proceedings arising therefrom on the basis of compromise dated 10.03.2021 (Annexure P2) and affidavit of complainant/respondent No.2 dated 06.03.2021 (Annexure P3) and affidavit dated 10.03.2021 (Annexure P4), are ordered to be quashed qua the petitioner.
22. Pending application(s) if any also stand(s) disposed of.

08.04.2024
Sunena

(Nidhi Gupta)
Judge

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