

204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-45589-2023 and
CRM-45592-2023 in/and
CRM-M-12251-2019
Date of decision: 19.04.2024

Manish Jhamb and othersPetitioners

versus

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Anand Singh, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG, Haryana with
Mr. Ramesh Kumar, SI, PS Women, Karnal.

RAJESH BHARDWAJ, J.
CRM-45592-2023

Prayer in the present application is for restoration of the main case to its original number which was disposed of by this Court vide order dated 18.10.2022 (Annexure A-1) for its adjudication on the basis of mutual compromise between the parties.

Notice in the application.

On asking of the Court, Mr. Rajneesh Chadwal, AAG, Haryana accepts notice on behalf of the State. He pleads no objection if the application is allowed.

As per learned counsel for the petitioners, this case was disposed of vide order dated 18.10.2022 on the basis of statement of learned State counsel who on instructions from ASI Pushpa stated that cancellation report has been prepared and filed before the Court of

competent jurisdiction which fact later on was found to be incorrect. ASI Pushpa when summoned by the Court to explain her position, she tendered her unconditional apology for the mistake. The present application has been filed for revival of the petition as respondent-wife after receiving the entire agreed amount from the petitioners had failed to turn up to suffer statement in support of the compromise whereas, the petitioners had already performed their entire part of settlement but the present FIR could not be cancelled or quashed and as such prayer has been made for revival of the petition.

In view of the above, the main case is restored to its original number. Application stands allowed.

Main case

Prayer in the present petition is for quashing of FIR No.0006 dated 08.01.2017 under Sections 323, 406, 498-A, 506, 376, 511, 34 of IPC registered at Women Police Station Karnal on the basis of compromise deed dated 27.11.2018 which is annexed as Annexure P-2 along with subsequent proceedings arising therefrom.

2. Adumbrated facts of the case are that the marriage of petitioner No.1 was solemnized with respondent No.2 on 01.07.2014. Both of them started cohabiting with each other and they were blessed with a son namely, Pushkar. However, thereafter, their matrimonial life ran into rough weather and respondent No.2 lodged an FIR in question. With the intervention of the respectables, the compromise was arrived at between both of them on the basis of the terms and conditions as incorporated in the compromise deed dated 27.11.2018 which is placed on record. Primarily, it was agreed that both the parties would put an end to all the litigations and they would file a petition under Section 13-B of the

Hindu Marriage Act for dissolution of marriage by mutual consent. It was further agreed that petitioner No.1 would pay a total amount of Rs.14,50,000/- and half of the amount i.e. Rs.7,25,000/- would be kept as fixed deposit in favour of minor son as his future claim. In pursuance to the compromise, petition under Section 13-B of the Hindu Marriage Act, 1955 was filed by respondent No.2. On completing the proceedings, the marriage of both petitioner No.1 and respondent No.2 was dissolved by decree of divorce dated 06.07.2019 passed by the Court of learned Additional Principal District Judge/Family Court, Karnal. On registration of the FIR, investigation commenced wherein on completion of the investigation, petitioners No.2 and 3 were found innocent and thus, they were kept in column No.2. The offence under Sections 376, 511 and 34 IPC were deleted in the chargesheet.

3. Learned counsel for the petitioners has vehemently contended that as per facts of the case, marriage between petitioner No.1 and respondent No.2 was solemnized on 01.07.2014. The FIR was registered however, during the investigation, petitioners No.2 and 3 were found innocent and thus, the chargesheet was filed only against petitioner No.1. So far as offence under Sections 376, 511 and 34 IPC are concerned, the same were deleted. He submits that compromise arrived at between both the sides and thus, as per terms and conditions of the compromise, petitioner No.1 paid the agreed amount of Rs.14,50,000/-. He has submitted that all the litigations pending between the parties were decided to be withdrawn. Besides this, the petition for dissolution of the marriage on the basis of the mutual consent was filed in the Court of learned Additional Sessions Judge Principal/Family Court, Karnal and thus, the marriage was dissolved by way of decree of divorce dated 06.07.2019. He

submits that both the parties are living separately since 2015. It is submitted that after having been granted divorce, both the parties remarried and they have children from the second marriage as well. He has submitted that respondent No.2 has shifted abroad and thus, neither her counsel nor she is appearing before the trial Court or this Court. It is submitted that nothing has survived in pursuance to the compromise arrived at between the parties but the petitioners are still facing the agony of the ongoing trial. He has also submitted that petitioner No.3 has already died. He has submitted that in view of the law settled, continuation of the proceedings against the petitioners is nothing but an abuse of the process of the Court and thus, the impugned FIR deserves to be quashed.

4. Notice was issued in the petition. Learned State counsel has filed the status report dated 12.04.2024. This Court provided repeated opportunities to respondent No.2 to appear before the Court however, there is no response from her side. Thereafter, the SHO of the concerned police station was directed to apprise respondent No.2 regarding the pendency of the petition so as to defend her case. The status report has been filed by way of affidavit of Ms. Satvinder Kaur Inspector SHO P.S. Women Karnal. Learned State counsel has drawn the attention of this Court to the status report filed wherein it is stated that the SHO visited the house of respondent No.2 and found the mother of respondent No.2 present at home. She recorded the statement of her mother which read as follows:-

“Stated that I am resident of the above mentioned address and I got solemnized marriage of my daughter Purmnima Verma with Manish Jhamb son of Om Parkash H.No.1618, Sector-14, Sonipat in the year 2014 and out of the wedlock they are having one son namely, Pushkar who is residing

with me. My daughter has obtained divorce from her husband about 7 years earlier and the documents of the same has been submitted before the Court. Now my daughter is living in Britain since 1 year. My daughter got registered FIR No.6 dated 08.01.2017 under Sections 498-A, 506, 406, 323 of IPC in Police Station Women which is still pending before the Court at Karnal. Still my daughter Purnima is in Britain. The mobile number of my daughter Purnima is 9990400123. My daughter Purnima has to appear the Hon'ble High Court of Punjab and Haryana on 19.04.2024 regarding CRM-M-12251-2019. I will inform my daughter Purnima on her telephone for her appearance. I got recorded my statement and read the same which is correct and I am fully satisfied.”

5. It is also submitted that on recording the statement, the SHO informed respondent No.2 on her Mobile No.9990400123 from the official Mobile No.8572881091 and she was informed about the date fixed in the present case before this Court. The information dated 08.04.2024 was also sent by whatsapp message on the said mobile number of respondent No.2. Despite giving the information, respondent No.2 neither appeared in person before the Court nor any counsel appeared on her behalf. She did not respond to the message given by the SHO on her mobile number on the whatsapp. It has been confirmed that respondent No.2 has already shifted to UK.

6. This Court has heard counsel for the petitioner and the State and with their able assistance, record has also been perused. There is no gainsaying that the marriage between petitioner and respondent No.2 has already been dissolved by decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act vide decree of divorce dated

06.07.2019. The terms and conditions of the compromise arrived at have already been complied with by the parties. Both petitioner No.1 and respondent No.2 are remarried and are settled in their new life. Despite the repeated efforts made by this Court, respondent No.2 did not choose to appear before the Court. Thus, the intention of respondent No.2 is very much clear that she after getting divorce from the petitioner No.1 and also after receiving an agreed amount of Rs.14,50,000/- from the petitioners has chosen not to appear before this Court for making statement in support of the compromise and by doing so she wants to harass the petitioners unnecessarily without any reason which cannot be permitted in view of the law held by the Hon'ble Supreme Court in **Ruchi Agarwal Vs. Amit Kumar Agrawal, 2004(4) RCR (Criminal) 949**. wherein Hon'ble the Supreme Court held as under:-

“7. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this arguments in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Criminal Procedure Code proceedings were pending that the compromise deed was filed under coercion but she

withdrew the same and gave a statement before the said Court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”

Thus, in the considered opinion of this Court, the prosecution of the petitioners in the impugned FIR is nothing but an abuse of the process of the Court. As submitted before this Court, petitioner No.3 has died, therefore, proceedings against him stands abated.

7. A bare perusal of statutory provision of the 482 Cr.P.C. would show that the High Court may make such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 320 Cr.P.C. is equally relevant for consideration, which prescribes the procedure for compounding of the offences under the Indian Penal Code.

8. Keeping in view the nature of offences allegedly committed and the fact that both the parties have amicably settled their dispute, the continuation of criminal prosecution would be a futile exercise. The Hon'ble Supreme Court in a number of cases including ***Narinder Singh and others Versus State of Punjab and another, 2014 (6) SCC 466;*** ***B.S.Joshi and others vs State of Haryana and another (2003) 4 Supreme Court Cases 675*** followed by this Court in Full Bench case of

Kulwinder Singh and others Vs. State of Punjab and another, 2007(3)

RCR 1052 have dealt with the proposition involved in the present case and settled the law.

9. Thereafter, Hon'ble Supreme Court in ***Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303*** further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in ***State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335***. Para 61 of the judgment reads as under:-

“61. 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 what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing

criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

10. Applying the law settled by Hon'ble Supreme Court in plethora of judgments and this High Court, it is apparent that when the parties have entered into a compromise, then continuation of the proceedings would be merely an abuse of process of the Court and by allowing and accepting the prayer of the petitioners for quashing the FIR would be securing the ends of justice, which is primarily the object of the legislature enacting under Section 482 Cr.P.C.

11. As a result, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and hence, FIR No.0006 dated 08.01.2017 under Sections 323, 406, 498-A, 506, 376, 511, 34 of IPC registered at Women Police Station Karnal is hereby quashed *qua* petitioners No.1 and 2 on the basis of compromise. Needless to say that the parties shall remain bound by the terms and conditions of the compromise.
12. Petition stands allowed.

19.04.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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