

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

279

CRM-M No.17509 of 2021
Date of Decision: 19.03.2024

Gurlal Singh Sra ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. R.S. Bajaj, Advocate,
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

Mr. A.P.S. Tung, Advocate,
for the complainant.

MANISHA BATRA, J.(Oral)

1. The petitioner is seeking quashing of FIR No.0257 dated 14.09.2020 registered at Police Station Civil Lines, Patiala, District Patiala under Sections 420, 384, 376 (2) (n), 342 and 506 of IPC and the proceedings having emanated therefrom on the basis of a written compromise stated to have been arrived at between him and the respondent No.2 as on 03.04.2021.
2. Shorn of unnecessary details, the facts of the case are that the aforementioned FIR was registered on the basis of a written complaint filed by the complainant "G" (name withheld) alleging therein that she was a social worker and was also posted as Chairperson of Human Rights Commission. Her daughter was a child artist who had earned fame in the film industry. She used to show her work and other achievements on the

Neutral Citation No.2024:PHHC:038933

facebook since the year 2015 and the petitioner used to like her posts since the year 2015. She had started responding to his posts since the year 2019 only. The petitioner represented to her that he was a man of integrity. He started talking to her through facebook and told her that he loved her. The complainant had fallen into his trap and they started remaining in contact through Whatsapp video calls and normal calls. The petitioner used to show that he was so much emotionally attached with her that he would not be able to live if she did not accept him. Believing all this, the complainant had agreed to meet him. They had met in a house of the petitioner on 03.01.2020. On 04.01.2020, he had taken her to a Gurudwara wherein in front of Guru Granth Sahib, he took oath to not to cheat her and promised that he would give her status of married life. He also assured that he would give divorce to his wife who was living in USA but who used to come to India only after a gap of 5-6 years. On this pretext, he started maintaining physical relations with her. Their relationship had grown thicker gradually and she even used to help the family members of the petitioner including his mother. However, from the month of August 2020 onwards, she started realizing that the behaviour of the petitioner had changed towards her. Though earlier they used to reside together for several days but on 14.08.2020, he told her to go back as his mother and sister were coming from their village. The complainant got this fact checked personally but found that he was telling a lie and his mother and sister were very much present in their village. When she confronted the petitioner, then he started extended threats to her by saying that he is not scared of jail and has undergone imprisonments in a rape case as well as in a case under TADA

Act and she could do whatever she liked. While alleging that the petitioner was having criminal antecedents and was keeping unlicensed weapon, she prayed for taking action against him. On the basis of her statement and after registration of FIR, investigation proceedings were initiated. The petitioner has been extended benefit of bail. Challan has not been presented so far and investigation is going on.

3. The present petition has been filed by the petitioner seeking quashing of FIR on the grounds that infact respondent No.2 and himself were known to each other since 2015 and had started living in live in relationship since the year 2019. It was on account of some misunderstanding that the complainant had lodged the FIR against him. Now she had realized that there was misunderstanding in her mind, which stood removed. She had been living voluntarily with him in a live in relationship with her own will and consent and it was not a case of rape. He had never made any promise to marry her as he was already married. Hence, it is submitted that the petition deserves to be allowed.

4. Learned counsel for the complainant has submitted that the complainant has no objection, if the petition is allowed. It will not be out of place to mention here that vide order dated 27.04.2021, the parties were directed to appear before the Court of learned Illaqa Magistrate/trial Court on 17.05.2021 and to get recorded their statements qua the compromise. The concerned Magistrate has sent report vide letter No.122 dated 18.05.2021 showing that the statements of the parties as well as of the Investigating Officer were recorded on 17.05.2021 and the respondent No.2/complainant had stated that she had no objection if the FIR of the present case was

quashed in terms of the compromise Ex.C1 and she also identified her signatures on the same. As per the report of the Magistrate, he had satisfied himself that the parties had voluntarily entered into compromise between themselves and amicably and genuinely.

5. 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;

Neutral Citation No.2024:PHHC:038933

(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.”

6. In **M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others**, 2021 SCC OnLine SC 315, the Hon'ble Supreme Court while reiterating the parameters laid down in **Bhajan Lal's** case (Supra), had observed that while the Courts ought to be cautious in exercise of powers under Section 482 of Cr.P.C., they have the power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence? The Court does not enter into the merits of the allegations or trench upon the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence. In **Dhruvaram Murlidhar Sonar Vs. State of Maharashtra**, 2019 (18) SCC 191, the Hon'ble Supreme Court again reiterated the parameters laid down in **Bhajan Lal's** case (Supra) had observed that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizable has taken place, it is open to the High Court to quash the same in exercise of the inherent powers.

7. An offence is punishable under Section 376 of IPC if the offence of rape is established in terms of Section 375 which set out the ingredients of an offence. The offence of 'rape' is defined under Section 375 of IPC setting out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary

Neutral Citation No.2024:PHHC:038933

agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. It will also be relevant to refer to Section 90 of IPC, as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent.

8. In **Pramod Suryabhan Pawar Vs. State of Maharashtra**, 2019 (9) SCC 608, it was observed that consent of woman with respect to Section 375 of IPC must involve an active and reasoned deliberation towards the proposed act. To establish whether the consent was vitiated by a misconception of fact arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time when it was given. Consequently, the false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

9. In this backdrop and taking the allegations in the FIR as they stand, it is impossible to find the essential ingredients of offence punishable under Section 376 of IPC. The relationship between the parties was admittedly purely of a consensual nature. The relationship was in existence despite the fact that the respondent No.2 fully knew that he was already a married person with child/children. In similar circumstances, as discussed above, the Hon'ble Supreme Court had allowed quashing of chargesheet and the order taking cognizance thereunder in **Shambhu Kharwar Vs. State of**

Neutral Citation No.2024:PHHC:038933

appellant had allegedly given a promise to the respondent to marry, had observed that even as per the allegations in the FIR and the charge sheet, ingredients of offence under Section 375 of IPC were absent and relationship of parties was purely of consensual nature and had allowed quashing of charge sheet and cognizance order.

10. 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 imprescriptible. 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 Crl. MC No.7497 of 2023, **Kahar and others v. State of Kerala and others**, wherein it was observed that the viability of quashing a

Neutral Citation No.2024:PHHC:038933

criminal proceeding on the ground that the accused and victim of sexual assault settle 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. In **Parteek and others v. State of Haryana and another**, 2018 (1) Law Herald 325, it was held that when the chances of the conviction are bleak and continuance of criminal proceedings would be a futile exercise keeping in view the factum of compromise between the parties, FIR and subsequent proceedings deserve to be quashed even in a case of rape.

11. 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, to the effect that the ingredients of offence punishable under Section 420, 384, 376 (2) (n), 342 and 506 of IPC are not prima facie established as per the allegations on the face of the record, that the parties have recorded statements before learned trial Court on 17.05.2021 confirming the factum of amicable settlement by stating that they have voluntarily arrived at a compromise, in my considered opinion,

Neutral Citation No.2024:PHHC:038933

not only the possibility of conviction is remote and bleak, even if the proceedings are ordered to be continued but also this is the case where continuance of the proceedings against the petitioner is likely to cause greater prejudice to the victim. In this regard, I am also fortified by observations made by High Court of Madras in CrI.O.P. No.25882 of 2019 and Criminal M.P. No.13776 of 2019 titled as *Sanjoy Bhattacharya v. State and another* decided on 01.04.2021 which it was a case of consensual sex between the parties who had settled the dispute between themselves. It was observed that continuation of criminal proceedings would put the accused to great oppression and prejudice and no purpose would be served in proceeding with the case against the petitioner. As such, 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. Accordingly, FIR No.0257 dated 14.09.2020 registered at Police Station Civil Lines, Patiala, District Patiala under Sections 420, 384, 376 (2) (n), 342 and 506 of IPC and the consequential proceedings arising therefrom, are ordered to be quashed qua the present petitioner and the petition stands allowed.

19.03.2024
manju

(MANISHA BATRA)
JUDGE

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