

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.20469 of 2022
Date of Decision: 11.01.2024

Vardaan Maseeh ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Pardhuman Garg, Advocate,
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Maninder Arora, 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.94 dated 03.07.2020 registered under Sections 376 and 506 of IPC at Police Station City-2, Khanna, District Ludhiana.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of a statement recorded by respondent No.2-complainant on 03.07.2020 claiming herself to be 26 years old alleged that she was in relationship with the petitioner from the last two and half years. The petitioner had been committing rape upon her on the pretext of and by making promise to marry her. Even his sister knew about their relationship and facilitated their meetings. In May 2020, the complainant

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had become pregnant. She told about this fact to the petitioner who assured her too that he would consult his parents. She alleged that on 10.05.2020 the petitioner called the complainant to his house and when she went there, all his family members extended beatings to her and she was abused by them. The mother and sister of the petitioner forcibly made her consume some tablet due to which she suffered an abortion after two days. She was taken back to her home by her mother and was now being threatened by the petitioner.

3. The present petition has been filed by the petitioner submitting therein that after lodging of the FIR in this case, the petitioner and respondent No.2 had got married on 20.07.2020 and had lived together as spouses. Now with the intervention of Mediator, a compromise had been arrived at between them and they had agreed to get their marriage dissolved by filing a petition for divorce by way of mutual consent. It is submitted that the terms of the settlement had been reduced into writing and the amount agreed to be paid had also been paid by the petitioner. Therefore, prayer has been made by him for quashing of the FIR by submitting that the respondent No.2 had agreed to get the same quashed.

4. Learned counsel for respondent No.2 has submitted that the pleas as taken in the petition are correct and are acceptable to respondent No.2 and she has no objection, if the FIR is quashed.

5. Learned State counsel has, however, opposed the prayer made by the petitioner by submitting that since the petitioner has been booked for commission of offence of rape which falls within the category of heinous crime and as compromise between the parties is not permissible under law

under this section, therefore, the petition is liable to be dismissed.

6. It will be relevant to mention here that vide order dated 19.09.2022, the parties were directed to appear before Illaqa Magistrate/Duty Magistrate on 14.10.2022 for recording their statements with regard to the genuineness/correctness of the compromise and the concerned Court was directed to send its report after recording their statements.

7. The Sub Divisional Judicial Magistrate, Khanna had sent her report to the effect that the statements of respondent No.2, the petitioner as well as the Investigating Officer of the case have been recorded with regard to the compromise/settlement and further that she was satisfied that the compromise between the parties was genuine, voluntary, without any coercion or undue influence.

8. 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

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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

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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.”

9. 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.

10. In view of the above discussed position of law qua exercise of inherent powers of the High Court for quashing criminal proceedings, the Court has to consider the question as to whether the quashing of FIR in this case can be allowed. As already mentioned, the petitioner has been booked for commission of offence punishable under Sections 376 and 506 of IPC on the allegation that he had committed rape upon respondent No.2 on the pretext of and by making promise to marry her and had also criminally intimidated her. The respondent No.2 is major. It is case of both the parties that they had performed marriage as on 20.07.2020. As such, it cannot be

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stated that the promise made by the petitioner to respondent No.2 to marry was false or was made with the intention to deceive her to convince her to engage in sexual relations. As per the definition of offence of 'rape' as given in Section 375 of IPC, this offence is committed when a female is subjected to sexual intercourse by a male without her consent. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary 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. In this very case, even on a bare perusal of the allegations levelled in the FIR, it is crystal clear that the ingredients of offence under Section 375 of IPC were absent and the relationship of the parties was purely of consensual nature. In similar circumstances, the Hon'ble Supreme Court had allowed quashing of chargesheet under Section 376 of IPC in **Shambhu Kharwar Vs. State of Uttar Pradesh and Anr.**, 2022 (4) RCR (criminal) 493. The parties have resolved their dispute after registration of FIR and had got married and it is only as per their mutual settlement that they have agreed to set their ways apart. Both the parties are major. In such circumstances, the chances of conviction of the petitioner are obviously remote and bleak. Ofcourse, 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

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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.

11. On considering the peculiar facts and circumstances of the case

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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 Sections 376 and 506 of IPC are prima facie not established as per the allegations on the face of record that the parties have recorded their statements before trial Court on 14.10.2022 affirming the factum of amicable settlement, in my opinion, even if the proceedings are ordered to be continued, they would not only put the petitioner to grave oppression but would also cause great prejudice to the victim 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.94 dated 03.07.2020 registered under Sections 376 and 506 of IPC at Police Station City-2, Khanna, District Ludhiana and the consequential proceedings arising therefrom, are ordered to be quashed and the petition stands allowed.

11.01.2024
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(MANISHA BATRA)
JUDGE

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