

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****252****CRM-M-19583-2023(O&M)****Date of order: 22.10.2024****Malkit Singh @ Malkeet Singh****.....Petitioner(s)****Vs.****State of Punjab & Others****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. P.S. Dhaliwal, Advocate
for the petitioner.

Ms. Aakanksha Gupta, AAG Punjab.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing of FIR No.273 dated 25.12.2022 registered under Section 354-A IPC and Section 12 of POCSO Act (later on added Sections 452 and 354 IPC and Section 8 of POCSO Act) at Police Station Civil Lines, Tehsil and District Patiala, Punjab (Annexure P1); AND consequential proceedings arising out of the same as the matter has been compromised between the parties vide compromise deed and Affidavit (Annexure P2 and P3).

2. Learned counsel for the petitioner submits that the present FIR came to be registered by the father of the alleged victims on the basis of some misunderstanding between the parties. It is submitted that the petitioner has nothing to do with the said allegations. Now the agreement dated 12.04.2023 (Annexure P2) has been entered into between the parties in respect of which Affidavit of the complainant (Annexure P3) attesting to the said compromise is also on record. It is submitted that

accordingly, the continuation of criminal proceedings despite compromise only amounts to abuse of process of law. It is accordingly prayed that the present petition be allowed, and the present FIR be quashed in terms of aforesaid compromise dated 12.04.2023 (Annexure P2).

3. On the other hand, the learned State Counsel opposes the prayer made on behalf of the petitioner and submits that it is established position in law that an FIR of such nature wherein the allegations under the POCSO Act have been made against the accused, cannot be quashed on the basis of compromise.

4. It is also submitted on instructions from ASI Gurpriyar Singh that the trial is at an advanced stage as challan stood presented on 23.02.2023; charges were framed on 10.03.2023; and out of 18 witnesses 5 already stand examined. It is accordingly prayed that the present petition be dismissed.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. FIR No.273 dated 25.12.2022 (Annexure P1) was registered on the basis of statement made by respondent No.2/father of the victims/respondents No.3 and 4 herein; and the same reads as follows:-

“A Statement at this time from Umesh Sharma Son of Mr. Prem Lal Sharma resident of Flat No.-T/406, Hero Homes, Sidhwa Canal Road, Village Shirmi, District Ludhiana through Occupied Tenant Ashu Aggarwal House No. 16, New Lal Bagh Colony, Patiala. Aged about 45 years old Mobile No. 93178-16001 in writing L/SISarbjeet Kaur 750/Patiala: about registration of

case against the accused Malkit Singh son of Sukhdev Singh resident of Quarter No. 265 Type-5, Ghalorhi Gate, Patiala, C.C received through Gagandeep Singh No. 3325/Patiala: at Police Station has tendered his statement that I am resident of the above said address and doing his own private business. I have four children, 02girlsPriya and Priyanka (twins) aged about 16 years and 02 boys, Shouryajeet Sharma, Rajveer Sharma. That my daughters Priya and Priyanka from last 2 years are taking practicing at Polo Ground Patiala from athletics coach Malkit Singh son of Sukhdev Singh resident of Quarter No. 265 Type-5, Ghalorhi Gate, Patiala. On Dated 24.12.2022 my daughters Priya and Priyanka after finishing their practice at Polo Ground Patiala returned home in the evening around time was 08:45 PM, that Coach Malkit Singh called at the mobile phone of my daughter Priya and told them that I am standing in the street in front of your house, that you come down I want to talk to you. That when my both daughters went down to Coach Malkit Singh he was drunk and he said that I wants to check their diet. Even after my daughters resisted the coach came forcefully into the room of my daughters. That coach Malkit Singh asked my daughters to keep their phone on the side and eat their food. Then coach Malkit Singh said my daughter Priyanka that | will cure your back pain by giving massage to you That when my daughter Priyanka came to know that the Coach Malkit Singh is touching her inappropriately, she stopped him and said no. Then he told my daughter Priya that I will give massage to you also, That despite her reluctance of my daughter Priya he started giving massage and sent my daughter Priyanka out of the room and locked the door from inside. Then on the pretext of giving massage he started touching chest of my daughter Priya, that when my daughter Priya started shouting and my daughter Priya broke away from him and open the door of the room. That my daughters asked him to leave but Coach Malkit

Singh insisted that he will sleep in the adjacent room only. That then my daughters called the landlord Ashu and Neelam the cleaner at their house, who said that only girls can stay here, and you should leave, that after which he took the mobile phone of my daughter Priya with him to his white color Scorpio car and sat and called at the mobile phone of my daughter Priyanka and asked to send Priya down to take her phone. But my daughter did not go, after which he left. That the Legal action should be taken against coach Malkit Singh. You have written the statement, read it, it is fine. SD/- Umesh Sharma, confirmed daughter Priyanka and asked to send Priya down to take her phone. But my daughter did not go, after which he left. That the Legal action should be taken against coach Malkit Singh. You have written the statement, read it, it is fine. SD/- Umesh Sharma, confirmed statement SD/- Shish Sharma attestation is Sarabjit Kaur. Police Station Civil Line Patiala Date 25/12/2022”

8. From a bare reading of the above FIR it is clear that serious allegations have been made against the petitioner. The victims are the twin daughters of the complainant who were aged about 16 years at the time of commission of alleged offence whereas the petitioner is aged about 39 years. Admittedly, the petitioner is in a fiduciary relationship with the victims as he is their Athletics Coach. Serious allegations have been made in the FIR to the effect that the petitioner is alleged to have harassed and assaulted the victims. The date of incident is 24.12.2022. FIR was lodged without any delay on 25.12.2022 itself. Learned State Counsel has informed on instructions that the victims in their statements recorded

under Section 164 Cr.P.C. on 26.12.2022, had fully supported the prosecution case.

9. Needless to say, such offences are not private in nature and have a far-reaching effect on society - more-so in the present case, given the relationship between the accused-petitioner and the victims. Moreover, offences committed under a Special Act, cannot be quashed summarily on the basis of a compromise. The POCSO Act has the laudatory objective of ensuring a safe and healthy environment for the complete and overall development of children. Acts such as the ones attributed to the petitioner, undermine the purpose and objective of the POCSO Act. In quashing an FIR of such nature, it will be rendering nugatory the avowed objective of the Special Statute, and shall set a bad precedent. It cannot be emphasised enough that this will be especially so in the present case in view of the fiduciary relationship between the petitioner and the victims. The power conferred upon this Court under Section 482 CRPC cannot be exercised for quashing proceedings involving heinous and serious crimes, such as the present one. It is also of relevance that in the present case, the compromise entered into by the petitioner is not even with the victims and has been engendered between the petitioner and the complainant. As such, I find no ground is made out to grant the prayer of the petitioner.

10. I am supported in my view by a judgment of the Allahabad High Court in case of **“Sanjeev Kumar Vs. State of UP & 3 Others”** Law Finder Doc ID # 2543577 decided on 02.04.2024, wherein it is held as follows: -

“10. From the reading of paragraph 29.3, it is clear that the power under Section 482 of Code of Criminal Procedure should not be exercised in those prosecutions which involve heinous and serious offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on the society. However, for the offence alleged to have been committed under "Special Statute" like the Prevention of Corruption Act, the prosecution cannot be quashed merely on the basis of compromise between the victim and the offender.

11. In the present case, the applicant is also facing trial for offence under Sections 3/4 of POCSO Act 2012. The POCSO Act 2012 is a "Special Statute" and any offence under the "Special Statute" cannot be quashed on the basis of compromise.

XXX

14. Thus, it is clear that where the prosecutrix is a minor below 18 years of age, then her consent would be immaterial. When an offence is made out against the accused irrespective of the fact that whether the prosecutrix was a consenting party or not, then certainly, the prosecution cannot be quashed merely on the ground that at a later stage the prosecutrix has entered into a compromise. Once the consent of the minor prosecutrix is immaterial for registration of offence, then such consent shall still remain immaterial for all practical purposes at all the stages including for compromise. Merely because, the minor prosecutrix has later on agreed to enter into a compromise with the applicant, would not be sufficient to quash the proceedings. Since the POCSO Act, 2012 is a Special Act, therefore, in view of the provisions of Sections 375 Sixthly of IPC, the consent of the prosecutrix is material. Thus, this Court is of the considered opinion that the prosecution of the accused for offence under Sections 3/4 of POCSO Act, 2012 cannot be

quashed merely on the ground that the prosecutrix has compromised the matter with the accused."

11. Reference may also be made to a judgment of this Court in **"Surinder Kumar Vs. State of Haryana & Others"** Law Finder Doc ID # **2048309 decided on 11.05.2022**, wherein it has been held as under: -

*"6. Statement of objects and reasons of the Act recognizes duty casted upon the State to direct its policy towards securing that the tender of age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity as directed by Article 39. The statement further declares, the enforcement of right of all children to security, safety and protection from sexual abuse and exploitation-as an object of the Act. Preamble of the Act declares it to be the Act to protect children from offences of sexual assault, sexual harassment and pornography. It is said, to have been enacted with reference to Article 15 (3) of the Constitution of India. The Preamble of the Act further declares sexual exploitation and sexual abuse of children as a heinous crime which need to be effectively addressed. While noticing this the Apex Court in the case of **Eera v. State (NCT of Delhi) (2017) 15 SCC 133**, observed that:*

"The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and

respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the Pocso Act."

XXX

8. It is further apposite to note here that the scope of exercise of power under Section 482 Cr.P.C is no more res-integra. In the case of **State of Madhya Pradesh v. Laxmi Narayan and others (2019) 5 SCC 688**, the Apex Court after considering various precedents including **Gyan Singh v. State of Punjab (2012) 10 SCC 303** and **Narender v. State of Punjab (2014) 6 SCC 466** held that:

"13. Considering the law on the point and the other decisions of this Court on the point referred to here-in-above, 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 here-in-above;

v) while exercising the power under section 482 of the Code to quash the criminal proceeding in respect of non-compoundable offences, which are private in nature and do not have a serious impart 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.

XXX

10. Keeping in view the aforesaid settled proposition of law, in the considered opinion of the court the offences under the Act being heinous in nature will fall under the exceptions as carved out by the Supreme Court in the case of **State of Madhya Pradesh v. Laxmi Narayan and others** (supra).

11. Another thing that needs to be noticed is that in the case of child the compromise affected between the parents cannot be recognized. Any agreement/compromise executed by the child (till the age of majority) himself/herself as in the present case will be void ab initio and thus cannot be accorded validity. Parents cannot be allowed to compromise the dignity of a child by an agreement: Where ever and whenever in a society governed by rule of law the question will arise: who will protect from the protector? The only and obvious answer will be-LAW.

"Children are human beings to whom respect is due, superior to us by reason of this innocence and of the greater possibilities of their future"

Maria Montessori"

12. Reliance may also be placed upon the judgment of this Court in **"Princepal Singh @ Princepal & Others Vs. State of Punjab & Others"** Law Finder DOC ID # 2025150 decided on 15.07.2022. In the said case also, the victim was a minor and it was held as under:-

"6.....The petitioners in the case in hand are being prosecuted for the offence under IPC and that of under the penal provisions of POCSO Act. As per the provisions of Section 29 and 30 of POCSO Act, there lies a presumption against the accused. Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335** has held that the High Court has inherent power under Section 482 Cr.P.C. for quashing the FIR,

however, the same should not be exercised for the offence falling under the heinous categories.”

13. Furthermore, as has been informed by the learned State Counsel, the trial in the present case is at advanced stage. In this context, reference may be made to a judgment by a Coordinate Bench of this Court, in case of **“Sikandar Masih Alias Shera and Another vs State of Punjab and Another” decided on 9.2.2023**, wherein it was held that:

“...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...”

14. Before parting it may also be pointed out that the present matter was firstly listed before this Court on 08.08.2023; whereupon it was adjourned at request of learned counsel for the petitioner who had sought time *“...to cite some case law to show that FIRs falling under the POCSO Act, can be quashed on basis of compromise...”*. Thereafter, the matter has been adjourned on the last date of hearing i.e. 08.08.2024 as there was no representation on behalf of the petitioner.

Even today, written request for adjournment has been filed on behalf of

the petitioner. However given the above said facts and case history, this Court is not inclined to entertain the said request. During this period, an application for pre-ponement of the case had also been filed by the petitioner which was dismissed by this Court vide order dated 05.10.2023. Thereafter, another application for pre-ponement was filed by the petitioner which was again dismissed by Co-ordinate Bench vide order dated 07.11.2023 whereby the petitioner was further directed to deposit costs of Rs.10,000/- with the Poor Patient Welfare Fund, PGIMER, Chandigarh within a period of four weeks. No receipt has been attached by the petitioner to show compliance of the said order.

15. In view of the above discussion, present petition is **dismissed.**

16. Pending application(s) if any also stand(s) disposed of.

22.10.2024

Sunena

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(Nidhi Gupta)
Judge