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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.22007 of 2023

Date of decision : 05.02.2024

Sukhwati Devi and ors.

Versus

....Petitioners

State of Haryana and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Satish Sharma, Advocate,
Mr. Mumtaz Ahmad, Advocate and
Mr. Vinay Bhushan, Advocate
for the petitioners.

Mr. Sanjeev Kumar, Addl. A.G., Haryana.

Mr. Nitin Thatai, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

1

By way of present petition, the petitioners are seeking quashing of FIR No.33 dated 04.02.2023, registered under Sections 120-B/419/420/467/468/471 of IPC, at Police Station Civil Lines, Gurugram and all consequent proceedings arising therefrom on the basis of compromise.

2

On 04.09.2023, the following order was passed:

“The present petition has been moved invoking jurisdiction of this Court under Section 482 Cr.P.C. The petitioners are seeking quashing of FIR No.33 dated 04.02.2023, registered for offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 of IPC, at Police Station Civil Lines, Gurugram and all subsequent proceedings arising thereto on the basis of compromise dated 27.03.2023 (Annexure P-2).

Status report by way of affidavit of Vikas Arora, IPS, Commissioner of Police, Gurugram on behalf of respondent No.1-State has been filed. The same is taken on record.

Commissioner of Police has tried to explain various steps undertakes to make it sure that incident of the nature as complaint by the parties in the present case are not repeated in the future. He is specific in submitting before the Court that the erring official i.e. I.O. ASI Om Parkash now stands transferred at Police Lines and departmental proceedings have been initiated against him. Officer, who is present in person undertakes to file periodic report w.r.t. the stage of such departmental proceedings initiated against the erring official.

The officer shall remain bound by his statement.

Parties are directed to appear before learned Illaqa Magistrate/trial Court on 19.09.2023.

On their doing so, the learned Illaqa Magistrate/trial Court shall record their statements and furnish its report to this Court by the next date of hearing on the following aspects:-

- 1. Number of persons arrayed as accused in the FIR.*
- 2. Whether any accused is proclaimed offender?*
- 3. Whether the compromise is genuine, voluntary and without any coercion or undue influence?*
- 4. Whether the accused persons are involved in any other case or not?*
- 5. The trial Court is also directed to record the statement of the Investigating Officer as to how many victims/complainants are there in the FIR.*

A copy of the report be also sent to the Registrar Judicial of this Court.

Needless to say that in case for any reason the statements are not recorded on the aforesaid date, the learned Illaqa Magistrate/trial Court shall be at liberty to call the parties on any other date but not later than a week thereafter.

Adjourned to 11.12.2023.

Till further orders, the personal appearance of the Officer shall remain exempted.”

3 Pursuant to the aforesaid order, report dated 30.10.2023 from Chief Judicial Magistrate, Gurugram has been received, which is taken on record. As per the report, the Trial Court has recorded as follows:-

“1. have the honour to submit that vide order dated 04.09.2023 passed by the Hon'ble High Court of Punjab & Haryana in CRM- M-

22007-2023, the parties to the petition were directed to appear before the Illaqa Magistrate/trial court on 19.09.2023 for recording their statements with regard to compromise/settlement. The Illaqa Magistrate/trial Court was also directed to submit a report on or before next date of hearing containing the following information:

(1) Number of persons arrayed as accused in FIR.

(2) Whether any accused is proclaimed offender.

(3) Whether the compromise is genuine, voluntary and without any coercion or undue influence.

(4) Whether the accused persons are involved in any other case or not.

(5) The Trial Court is also directed to record the statement of the Investigating Officer so as to how many victims/complainants are there in the FIR.

2. In compliance of the order dated 04.09.2023 of Hon'ble High Court, Complainant/respondent - Saras Kumar - (Cluster Credit Manager of AU Small Finance Bank Limited, Registered Office at 19-A, Duleshwar Garden, Ajmer Road, Jaipur, Rajasthan and accused persons namely Hemant Kaushik, Sukhwati Devi, Kiran, Pankaj Sharma, Karnesh Kumar Rajput and Subhash Chand Gautam appeared before this Court (being the Trial Court) on 19.09.2023. Thereafter, complainant as well as accused got recorded their separate statements qua compromise effected between them. It is humbly submitted that before recording the statements qua compromise effected between the parties, the complainant as well as the accused have been asked by this Court regarding the genuineness of the compromise. Both the parties have stated that they entered into the compromise voluntarily and without any coercion and undue influence.

3. Thereafter, the investigating officer was called in the Court, upon which Investigating officer - SHO/Inspector Poonam, Police Station Civil Lines, Gurugram turned up before the Court on 25.10.2023 and got recorded her statement qua the present case.

4. In view of statements of the complainant, accused and the Investigating officer, this Court make the following report that:

(i) There is only 6 person arrayed as accused in this FIR namely, Sukhwati Devi, Kiran, Hemant Kaushik, Pankaj Sharma, Subhash Chander Gautam and Karnesh Kumar.

(ii) Accused persons are not proclaimed offender.

(iii) The compromise is genuine, voluntary and without any coercion or undue influence.

(iv) *The accused persons are not involved in any other FIR.*

(v) *Statement of investigating officer has been recorded as per which, there is only 1 complainant/victim in this FIR namely, Saras Kumar (Cluster Credit Manager of AU Small Finance Bank Limited, Registered Office at 19-A, Duleshwar Garden, Ajmer Road, Jaipur, Rajasthan.*

5. Original statements of the complainant, accused along with statement of investigating officer, and this report are enclosed for your kind perusal and necessary action.”

4 The aforesaid report reveals that apart from the complainant Saras Kumar (Cluster Credit Manager of AU Small Finance Bank Limited, Registered office at 19-A, Duleshwar Garden, Ajmer Road, Jaipur, Rajasthan, there are six accused persons namely Hemant Kaushik, Sukhwati Devi, Kiran, Pankaj Sharma, Karnesh Kumar Rajput and Subhash Chand Gautam, as arrayed in the present FIR.

5 Learned counsel for respondents No.2 admits the fact of parties having compromised and states that he has no objection in case the FIR and all proceedings subsequent thereto against the petitioners are quashed.

6 Similarly, learned State counsel has stated no objection in case the FIR is quashed based upon the compromise (Annexure P-2).

7 I have heard learned Counsel for the parties and have carefully gone through the records of the case.

8 This Court and Apex Court has repeatedly dealt with the issue of exercise of jurisdiction under Section 482 Cr.P.C. to quash proceedings in non-compoundable offences in the cases of ***Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688, Kulwinder Singh & others vs. State of Punjab & another, 2007 (3) RCR (Criminal) 1052 and Ram***

Gopal and another vs. State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322 (Criminal Appeal No.1489 of 2012 decided on 29th of September, 2021). The proposition of law that emerges from the aforesaid decisions rendered by Apex Court and this Court is :

(a) Power u/s 482 Cr.P.C. vested with this Court is much wider and unaffected by Section 320 of the Code.

(b) However, wider the power greater the caution.

(c) The underlining principle while exercising such power is that it can be invoked to quash the proceedings recognizing compromise between the parties in the matters which are overwhelmingly and predominantly of civil character like commercial transactions or arising out of matrimonial relationship or family disputes.

(d) The said power is not to be exercised in the prosecutions involving heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. as such offences are not private in nature and have a serious impact on society.

(e) Section 482 Cr.P.C. casts duty upon the High Court to advance interest of justice as well. It is in recognition of this duty casted upon the High Court, that Apex Court held that the High Court would not refuse to quash FIR under Section 307 merely because FIR finds mention thereof. High Court can assess nature of injuries sustained, whether such injuries inflicted on vital/delicate parts of the body/nature of weapons used etc.

(f) Such exercise at the hands of High Court would be permissible only after the evidence is collected after investigation and chargesheet is filed/charges framed during the trial. Such exercise cannot be carried out while the matter is still under investigation.

(g) While quashing FIR in non-compoundable offences even which are of private in nature, High Court is required to consider antecedents of the accused, conduct of the accused and whether he was absconding or whether he has managed the complainant to enter into a compromise.

this Court is of the considered opinion that it is a fit case to exercise jurisdiction vested u/s 482 Cr.P.C. to quash the FIR as:-

- (i) *The present matter does not fall within the exceptions as carved out in **Laxmi Narayan's** case (supra) i.e. heinous offence.*
- (ii) *The offences alleged are of private nature.*
- (iii) *The parties have compromised.*
- (iv) *As per the report received the compromise is said to be voluntary in its nature.*
- (v) *Complainant/victim is reported to have entered into compromise on his own volition.*

10 Since the parties are *ad idem* that the compromise/settlement has to be read strictly *inter se* between the parties to the present petition and the complainant wants to pursue prosecution of rest of accused, and it is only accused-petitioners who have approached this Court by way of present petition, the present petition is being entertained and allowed *qua* them only.

11 The question raised by State counsel as to whether the FIR can be quashed in part or not already stands answered by Apex Court in '**Lovely Salhotra and another vs. State (NCT of Delhi)**' reported as (2018) 12 SCC 391, wherein it was observed as under:-

“xx xx xx

We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants – herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants - herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2 – herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the

learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie.”

12 Consequently, the petition is allowed. FIR No.33 dated 04.02.2023, registered under Sections 120-B/419/420/467/468/471 of IPC, at Police Station Civil Lines, Gurugram and all proceedings arising therefrom, are hereby quashed *qua* the petitioners.

05.02.2024
spn

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No