

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

307

CRM-M No.29409 of 2023
Date of decision: 29.02.2024

AJAYPAL SINGH AND OTHERS Petitioners
Versus
STATE OF PUNJAB AND ANOTHER Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Kuldip Singh, Advocate,
for the petitioners.

Mr. Satjot Singh, AAG, Punjab.

Mr. Vikrant Vij, Advocate,
for respondent No.2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure by the petitioners-accused seeking quashing of FIR No.100 dated 08.10.2021 registered under Sections 376 and 34 of IPC (Section 120-B of IPC was added later on) at Police Mamdot, District Ferozepur (Annexure P-1) on the basis of compromise/affidavit dated 25.05.2023 (Annexure P-2).

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the abovementioned FIR was registered on the basis of statement recoded by the complainant-'N'(name withheld) alleging therein that Raj Rani sister of accused Ajaypal Singh and Sukhdeep Singh Fauji was married in the native village of Praveen Kaur cousin sister of complainant. On 9/10th March 2019, she had gone to attend

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marriage of Sarwan Singh whose family was known to them. In the said marriage, her cousin Parveen Kaur introduced her with Ajaypal Singh. On 09.04.2019, there was some function in the house of Raj Rani who is sister of accused Ajaypal Singh and complainant along with her family members had gone to attend that function also. On the same night, at about 8-9 pm, the accused Parveen Kaur and Raj Rani took her to an old vacant house belonging to accused Jaswinder Singh where Jaswinder Singh and Ajaypal Singh were already present. While representing that they would come back in sometime, both Parveen Kaur and Raj Rani had left and then, the accused Ajaypal Singh committed rape upon her while extending beatings to her and then left her at the spot. Thereafter, accused Raj Rani, Parveen Kaur and Jaswinder Singh came to that room and told her to not to raise any noise and assured that they will get her marriage performed with Ajaypal Singh. Thereafter, on the pretext of performing marriage with her, accused Ajaypal Singh maintained physical relations with her and also forced her to develop such relation with his brother Sukhdeep Singh Fauji too. On 10.09.2020, accused Sukhdeep Singh Fauji had also committed rape upon her. On the basis of her statement, a case under Section 376 read with Section 34 of IPC was registered and investigation proceedings were initiated. Subsequently, offence under Section 120-B of IPC was added. Some of the petitioners were extended benefit of anticipatory bail and others were extended benefit of regular bail. After completion of necessary investigation and usual formalities, challan was presented in the Court. Presently, the petitioners are facing trial for the commission of offences punishable under Sections 376 read with Section 34 and 120-B of IPC before the trial Court.

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that a compromise has been arrived at between the prosecutrix and themselves and they have decided to resolve their dispute. The prosecutrix has performed marriage with petitioner No.1-Ajaypal Singh on 19.05.2023. Respondent No.2-complainant/prosecutrix has executed in the form of an affidavit, compromise with the petitioners thereby, agreeing to quash the FIR of this case. Prayer, therefore, has been made for allowing the petition.

4. It will not be out of place to mention here that learned counsel for respondent No.2 has also affirmed the fact that marriage between petitioner No.1 and respondent No.2 has been performed and they are living happily together. He has submitted that the respondent No.2 has no objection, if the FIR is quashed.

5. Learned State counsel, on the other hand, has opposed the prayer made by the petitioners by arguing that there are serious allegations against the petitioners. The offence for which they have been booked falls within the category of heinous crime. The compromise between the parties is not permissible in law. By submitting that the petition is misconceived and cannot be allowed, he has urged that the same is liable to be dismissed.

6. It will also relevant to mention here that vide order dated 12.09.2023, the parties were directed to appear before the learned trial Court on 13.10.2023 for recording their statements with regard to the compromise. The trial Court was directed to submit report in the matter. A report has been submitted by the trial Court vide letter bearing endorsement No.424 dated 04.11.2023 as per which the statements of the petitioners No.1 and 3 to 5 and respondent No.2 had been recorded on 16.10.2023 and the statement of the Investigating Officer had been recorded on 20.10.2023. As per report submitted by the trial Court vide letter bearing endorsement No.39 dated

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15.02.2024, the statement of petitioner No.2 had been recorded on 08.02.2024. As per the trial Court, the statements have been recorded without any pressure, undue influence and coercion and the parties have voluntarily recorded their statements.

7. 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;

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

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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.”

8. 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

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caused to him by not quashing criminal case.

9. In view of the above discussed position of law, it is to be seen whether an offence punishable under Sections 376, 34 and 120-B of IPC has been made out even on assuming all the allegations as set out in the FIR to be correct. In my considered opinion, the answer should be in the negative. The petitioner No.1 and the respondent No.2 are major. It has not been indicated from the circumstances of the case that the promise given by petitioner No.1 to marry the respondent No.2 at the very inception of relationship of the parties was false and on the basis of the same, she was induced into sexual relationship. As such, their relationship can be considered to be purely of consensual nature. The petitioner No.1 has performed marriage with respondent No.2 on 19.05.2023. The facts as they stand and are not in dispute clearly indicate that the ingredients of offence under Sections 376, 34 and 120-B of IPC are not prima facie established and allegations on the face of the record cannot be taken to be true.

10. Reference can be made to **Ananda D.V. Vs. State and another**. 2021 All SCR (Criminal) 1175, wherein the gravamen of the allegations in the FIR filed by the private respondent was that the appellant-accused had promised that he would marry her, which promise was not kept by him. The parties resolved their dispute after registration of FIR and had got married. The Apex Court took an overall view of the matter and allowed quashing of FIR and all the steps taken on the basis of impugned FIR were ordered to be treated as effaced from the record in law; to **Kundan and another v. State and others**, CrI. M.C. No.27 of 2022 decided on 21.02.2022 by High Court of Delhi, wherein an FIR registered under Sections 363, 366 and 376 of IPC read with Section 6 of POCSO Act, 2012

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was quashed on the ground that the victim was got married with the accused and had delivered a male boy and to **Vaibhav Bhalotia v. State of UT, Chandigarh and another**, 2023 (2) RCR (Criminal) 381, wherein the victim of sexual assault had married the petitioner and they were happily residing together after solemnizing the marriage. A Coordinate Bench of this Court while considering the peculiar facts and circumstances held that it would be to secure the ends of justice in the light of amicable settlement having been effected between the parties and it will be for the welfare of the parties and would further tend to strengthen the healthy matrimonial relationship between them that the quashing of proceedings deserve to be allowed and had allowed the same.

11. 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

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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 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.

12. 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 offences punishable under Sections 376, 34 and 120-B 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 16.10.2023 and 08.02.2024 confirming the factum of amicable settlement by stating that they have voluntarily arrived at a compromise, the fact that petitioner No.1 has performed marriage with respondent No.2-complainant, in my

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considered opinion, 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 petitioners are 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 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 No.100 dated 08.10.2021 registered under Sections 376 and 34 of IPC (Section 120-B of IPC was added later on) at Police Mamdot, District Ferozepur (Annexure P-1) and the consequential proceedings arising therefrom, are ordered to be quashed and the petition stands allowed.

29.02.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:
Whether reportable

:
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Yes/No.
Yes/No