

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-40293-2020 (O&M)
Date of decision: 16.04.2024

AMARBIR SINGH AND ORS

....PETITIONERS

V/s

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ashit Malik, Advocate
for the petitioners.

Ms. Mahima Yashpal, DAG, Haryana.

Mr. Maneet Kaushik, Advocate for
Mr. Saurabh Kapoor, Advocate
for respondent No.2.

SUMEET GOEL, J.

1. By way of present petition, the petitioners are seeking quashing of FIR No.478 dated 26.11.2017 under Sections 498-A, 506, 406, 34, 377 of IPC, registered at Police Station Kurukshetra University, Kurukshetra, District Kurukshetra and all consequential proceedings arising therefrom on the basis of compromise dated 27.11.2020 (Annexure P-2), which is stated to have been effected between the parties.

2. On 04.12.2020, the following order was passed:

*“All the cases listed today have been taken up for hearing byway of video conferencing because of the situation existing due to the Covid-19 pandemic.
This petition has been filed seeking quashing, on the basis of a compromise arrived at between the petitioners and respondent no.2, of FIR no.478 dated 26.11.2017 (as also all other subsequent proceedings arising therefrom), registered at Police Station Kurukshetra University, District Kurukshetra, for the alleged commission of offences punishable under Sections 498A, 506, 406, 34 and Section 377 of the IPC. A copy of the*

compromise deed has been annexed as Annexure P-2 with the petition.

Notice of motion be issued to the respondents.

On the asking of the Court, Mr. Surender Singh, AAG, Haryana, accepts notice on behalf of respondent no.1.

Mr. Saurabh Kapoor, Advocate, appears and accepts notice on behalf of respondent no.2 and does not deny the factum of the compromise reached between the parties.

Adjourned to 04.02.2021.

In the meanwhile, the petitioners, as also respondent no.2 would appear before the learned Area Magistrate up to 12.01.2021 to record their statements. That Court would satisfy itself with regard to the authenticity of the compromise and the fact that it has been arrived at without any kind of undue influence or pressure, and would thereafter send its report to this Court, before the next date of hearing.

That Court would also verify whether there is any other person involved in the occurrence, who is not a party to the present petition and whose consent for the compromise would be required, if this Court comes to the conclusion that the FIR sought to be quashed can be so quashed.

A gazetted officer is directed to file an affidavit stating therein whether there are any other criminal cases, of like nature or otherwise, pending against the petitioners or not.”

3. Pursuant to the aforesaid order, report dated 23.02.2023 from Chief Judicial Magistrate, Kurukshetra has been received, which is taken on record. As per the report, the Trial Court has recorded as follows:-

“Vide order dated 20.09.2022 passed by Hon'ble Punjab & Haryana High Court in CRM-M-40293 of 2020 (O&M) the parties and the investigating officer were directed to appear before the Trial Court/Area Magistrate on 06.12.2022 or any day thereafter for getting their statement recorded in terms of order dated 11.05.2022 passed by said court. The Trial Court/Area Magistrate has been directed to make necessary arrangement for recording the statement of petitioner no. 1 as well as complainant/respondent no. 2 through the medium of video- conferencing on the ground that they are residing abroad.

On 06.12.2022 accused namely Kulwant Singh and Kuldeep Kaur appeared and suffered a joint statement to the effect that they have compromised the matter with the complainant and case under Section 13- B of Hindu Marriage Act has also been filed in the court concerned on 02.12.2022 and the next date of hearing in said case is of 03.07.2023.

They had further stated that the complainant had come only for 5 days for recording statement in said case and thereafter shall come in the month of February and they had prayed that the

present case be adjourned in the month of February. On the basis of prayer made by accused Kulwant Singh and Kuldeep Kaur, the matter was adjourned to 10.02.2023 for awaiting presence of parties for recording their statement. Notice was also issued to complainant Sandeep Kaur with the liberty either to appear before the court in person or through video-conferencing for recording her statement. On 10.02.2023, court notice issued to complainant Sandeep Kaur received back unserved. Accused Kulwant Singh and Kuldeep Kaur appeared and they were asked whether they had any information with respect to mobile number/whatsapp number of complainant so that her statement through video-conferencing on the point of compromise could be recorded but the accused expressed their inability to provide said details of the complainant and they again suffered a joint statement to the effect that the complainant party resides in Australia and even the power of attorney of complainant i.e. her father Jassa Singh resides there. They have stated that they have no information regarding phone number/whatsapp number of complainant or her father Jassa Singh. Further they stated that with the intervention of respectable persons of their society they had a communication with complainant side whereby the complainant side informed them that they are unable to come to India and in case filed under Section 13-B of Hindu Marriage Act, the next case of hearing is 03.07.2023 and on that day only the complainant side shall come to India and then shall give her statement before this court with respect to their compromise and accordingly accused sought an adjournment.

Separate notice was also issued to the I.O. concerned upon which P/SI Prince appeared and he stated that he has no information regarding residential address of complainant, who is residing abroad and neither he has information regarding her mobile number/whatsapp.

Thus, on account of non availability of residential address of complainant, who is established to be residing abroad i.e. Australia and non availability of any of her whatapp or mobile number so as to contact her through whatsapp call to record her statement with respect to compromise, the statement of parties on the point of their compromise could not be recorded. It is further submitted that as per the statement given by the accused persons, the complainant has been averred to be coming to India to record her statement with respect to compromise in July, 2023 i.e. the month in which separate case filed under Section 13-B of Hindu Marriage Act has been adjourned.

Thus, requisite report is being submitted for your kind perusal and necessary directions in this regard please.”

4. Learned counsel for respondent 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.

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

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

7. This Court and the Hon'ble Apex Court has repeatedly dealt with the issue of exercise of jurisdiction under Section 482 of the Code to quash proceeding in non-compoundable offences in the cases of ***Gian Singh vs. State of Punjab and another, 2012(10) SCC 303, 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 the Hon'ble Apex Court and this Court is :

- (a) *Power u/s 482 Cr.P.C. vested with this Court is much wider and is 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.*

8. Thus, keeping in view the aforesaid facts and circumstances, 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) Putting a quietus to the proceedings will bring peace and tranquility amongst parties & will accordingly further the cause of substantial justice.*
- (ii) The offences alleged are primarily 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.*

9. Consequently, the petition is allowed. FIR No.478 dated 26.11.2017 under Sections 498-A, 506, 406, 34, 377 of IPC, registered at Police Station Kurukshetra University, Kurukshetra, District Kurukshetra and all consequential proceedings arising therefrom on the basis of compromise dated 27.11.2020 (Annexure P-2), are, hereby, quashed qua the petitioner subject to deposit of Rs.20,000/- as cost by the petitioner within two weeks from today with the Haryana State Legal Services Authority Panchkula.
10. Pending application(s), if any, shall also stand disposed off.

April 16, 2024
jatin

Whether speaking/reasoned:
Whether reportable:

(SUMEET GOEL)
JUDGE

Yes/No
Yes/No