

272

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-47619-2021

Date of Decision : 23-04-2024

Rajan alias Rajan Sharma and anr.

.....Petitioners

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Mohit Garg, Advocate
for the petitioner No.1.

Mr. Tushar Gera, Advocate for
Mr. Jagdeep S. Rana, Advocate
for petitioner No.2.

Mr. J.S. Arora, DAG Punjab.

Mr. K.P.S. Dhaliwal, Advocate
for Mr. Hardik Ahluwalia, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

1. By way of present petition, the petitioners are seeking quashing of FIR No.0051 dated 15.07.2021 registered for offences punishable under Sections 406, 420 of the Indian Penal Code, 1860 at Police Station Pojewal, District SBS Nagar, for private offence.

2. On 24.01.2024, the following order was passed :-

“Learned counsel for the petitioners as well as complainant are ad-idem that the matter stands compromised between the parties.

FIR was registered for offences punishable under Sections 406/420 IPC at PS Pojewal, District SBS Nagar Le. for private offence.

In view of above, parties are directed to appear before the trial Court/Duty Magistrate on 12.02 2024. On their doing so, the learned trial Court/Duty Magistrate 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 trial Court/Duty Magistrate shall be at liberty to call the parties on any other date but not later than a week thereafter.

Court has been informed that now the complainant is behind bars. It will be open for the Court to get the statements of the parties recorded through video conferencing.

Adjourned to 23.04.2024.”

3. Pursuant to the aforesaid order, report dated 19.02.2024 from Judicial Magistrate 1st Class, Balachaur, has been received, which is taken on record. As per the report, the Trial Court has recorded as follows:-

“Kindly refer to the subject cited above, I have the honour to submit my report as under:-

As per the Order dated 24.01.2024 passed in CRM- M-47619-2021 titled as Rajan Alias Rajan Sharma versus State of Punjab and others, parties were directed to appear before the Trial Court/ Duty Magistrate for recording their respective statements with regard to compromise on 12.02.2024 or within a week thereafter and the Trial Court/Duty Magistrate was directed to submit its report on or before the next date of hearing.

It is humbly submitted that the complainant appeared before the Court on 15.02.2024 consequent upon issuance of production warrants as he was lodged in Central Jail, Ludhiana in connection with some other FIR. He was identified by the IO. He suffered his statement before the Court that FIR No.15 dated 15.07.2021 under Sections 406 and 420 of IPC, PS Pojewal was registered at his instance by the Police against accused namely Daman Sharma and Rajan Sharma both sons of Davinder Sharma. He is complainant of the said FIR. He has compromised the dispute with the accused persons and vide order dated 24.01.2024 of Hon'ble Punjab and Haryana High Court passed in CRM-M-47619-2021, he has been directed to suffer his statement qua the compromise. It is submitted that the compromise is genuine, voluntary and out of free will of the parties. He is making this statement voluntarily without any pressure. As per the compromise, his brother has received demand draft of Rs.1,00,000/-. He identified both the accused i.e. Daman Sharma and Rajan Sharma who had appeared through video conferencing in the Court. He has no objection if the FIR against the accused is quashed by the Hon'ble High Court.

Accused i.e. Rajan Sharma and Daman Sharma appeared before the Court through Video Conferencing as at present they are residing in Australia and application was filed by their counsel for recording their statement through video conferencing. Since the Hon'ble High Court vide order dated 24.01.2024 had directed the trial Court that it shall be open for the Court to get the statement of the parties recorded through Video Conferencing, the application was allowed and statement of both the accused was recorded through video conferencing.

Accused Daman Sharma suffered his statement that he has appeared before the Court for recording his statement as directed by

Hon'ble Punjab and Haryana High Court vide order dated 24.01.2024 passed in CRM-M-47619-2021 in FIR No.15 dated 15.07.2021 u/s 406 and 420 of IPC, PS Pojewal through video conferencing being resident of Australia. He is one of the accused person of the said FIR IHe has compromised the dispute with the complainant Mukesh Kumar. It is submitted that the compromise is genuine, voluntary and out of free will of the parties. He is making this statement voluntarily without any pressure As per the compromise, the brother of the complainant has received demand draft of Rs.1,00,000/- FIR may kindly be quashed.

Accused Rajan Sharma suffered his statement he has appeared before the Court for recording his statement as directed by Hon'ble Punjab and Haryana High Court vide order dated 24.01.2024 passed in CRM-M- 47619-2021 in FIR No.15 dated 15.07.2021 u/s 406 and 420 of IPC, PS Pojewal through video conferencing being resident of Australia. He is one of the accused person of the said FIR. He has compromised the dispute with the complainant Mukesh Kumar. It is submitted that the compromise is genuine, voluntary and out of free will of the parties. He is making this statement voluntarily without any pressure. As per the compromise, the brother of the complainant has received demand draft of Rs.1,00,000/-. FIR may kindly be quashed.

The statement of the IO was also recorded on 13.02.2024 who stated that he is investigating officer of case bearing FIR No.51 dated 15.07.2021 registered under Sections 406 and 420 of IPC Police Station Pojewal, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar. The aforesaid FIR was registered after inquiry on the complaint of complainant Mukesh Kumar s/o Krishan Chand r/o Chandiani Kalan, Police Station Pojewal, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar against the accused namely (1) Daman Sharma (2) Rajan Sharma both sons of Davinder Sharma r/o House no. 495/A, Phase-3A, Mohali, Police Station Mataur, District SAS Nagar. There is no other accused involved in the aforesaid FIR. None of the accused are involved or declared proclaimed offender in present case. There is no other criminal case pending against the aforesaid accused. The complainant Mukesh Kumar is the only one victim in this case.

The point wise information as sought by the Hon'ble High Court is as follows:

1. As per the statement of IO, only two persons i.e. Daman Sharma and Rajan Sharma are arrayed as accused in the FIR in question.

2. As per the statement of the IO, none of the accused person has been declared as Proclaimed Offender till date.

3. As per the statements of the complainant and the accused persons, I am satisfied that the matter has been compromised voluntarily between the parties and same is genuine without any undue influence, coercion or pressure.

4. As per the statement of the IO, the accused persons are not involved in any other FIR.

5. The statement of IO has been recorded and as per his statements, there is only one complainant/victim of the present FIR i.e. Mukesh Kumar.

It is further submitted that the statements of IO, complainant, accused persons and report of System Analyst regarding Video Conferencing are attached herewith.”

4. Learned counsel for respondent No.2 admits the fact of parties having 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 .

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

7. This Court and Apex Court has repeatedly dealt with the issue of exercise of jurisdiction under Section 482 of the Code to quash

proceeding recognizing compromise between parties 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, 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) and Mohammad Wajid & anr. Vs. State of U.P. & ors, 2023 AIR (SC) 3784.*** 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 wiser 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.

(h) When it comes to quashing of FIR or criminal proceedings, the criminal antecedents of the accused cannot be the sole consideration to decline to quash the criminal proceedings.

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) 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.

9. Consequently, the petition is allowed. FIR No.0051 dated 15.07.2021 registered for offences punishable under Sections 406, 420 of

the Indian Penal Code, 1860 at Police Station Pojewal, District SBS Nagar, for private offence and all proceedings arising therefrom are hereby quashed *qua* petitioners.

23-04-2024
spn

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No