

241 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50986-2022 (O&M)

Date of Decision: 15.03.2024

DALIP SINGH

.....PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Hitesh Chopra , Advocate,
for the petitioner.

Mr. Davinder Bir Singh, Sr. D.A.G., Punjab.

HARPREET KAUR JEEWAN J.

1. Prayer in the present petition is for quashing of FIR No. 0037 dated 26.05.2016, registered at Police Station Behrampur, District Gurdaspur, under Section 376 read with Section 120-B of the Indian Penal Code, 1860, (for short '*the IPC*') and Section 4 of the Protection of Children from Sexual Offences, Act, 2012 (for short '*the POCSO Act*') on the basis of a compromise dated 08.09.2022 (Annexure P-2) between the parties and further quashing of the order dated 23.11.2016 (Annexure P-5), passed by the learned Judicial Magistrate Ist Class, Gurdaspur, whereby the petitioner has been declared as a Proclaimed Person.

2. Counsel for the petitioner *inter alia* contends that the FIR was registered at the instance of the complainant-prosecutrix. Thereafter, a compromise has been effected between the parties and a compromise deed

dated 08.09.2022 (Annexure P-2) has been executed between the petitioner and the complainant.

3. It is further contended that the present FIR is a counter-blast to the complaint to GDR No. 49, registered at Police Station Behrampur, under Section 323 of the IPC against the complainant-prosecutrix, her father and others who entered into a scuffle and caused injuries to the mother and the family members of the petitioner when they came to know that the prosecutrix is having love affair with the petitioner Dalip Singh. The petitioner has been wrongly declared as a Proclaimed Person. It is further contended that the petitioner is ready to join the investigation and appear before the trial Court.

4. Counsel for the petitioner has contended that since the prosecutrix is now married and she is happily living with her spouse, as such, she does not want to take any action against the petitioner and executed a compromise dated 08.09.2022 (Annexure P-2).

5. A status report, dated 24.01.2024, by way of an affidavit of Sh. Aditya Warriar, IPS, Assistant Superintendent of Police, Dinanagar, District Gurdaspur, has been filed in Court today by learned State counsel. The same is taken on record.

6. Learned State counsel has opposed the prayer made in the petition and has contended that the co-accused of the petitioner had been appearing before the trial Court, however, the petitioner did not appear, as such the proclamation against the petitioner was issued and the same was effected on 19.10.2016 and ultimately, vide order dated 23.11.2016 (Annexure P-5), the petitioner was declared as a Proclaimed Person.

7. I have considered the aforesaid contentions.

8. The FIR was registered at the instance of respondent No. 2-prosecutrix who is alleged to be 16 years of age and a student of 10+2. The date of birth of the prosecutrix is 20.09.2000 as per the status report. As per the prosecution version, on 23.05.2016 at about 07:30 p.m., the prosecutrix received a phone call on the mobile phone of her father whereby the petitioner asked her to come near '*Dhusi Bun*'. The prosecutrix went there. The petitioner insisted her to sit at his motor-cycle and took her in a room forcibly and committed rape upon her against her will. Thereafter, the petitioner left her on 24.05.2016, i.e. the next very day and she reached her home at about 06:30 p.m. in the evening. The medical examination of the victim was conducted and as per the report of the Chemical Examiner "Spermatozoa was detected in the contents of Ex. 1 (a) & (b)". The petitioner has been declared as a Proclaimed Person, vide order dated 23.11.2016 (Annexure P-5).

9. The first prayer is for quashing of the order dated 23.11.2016 (Annexure P-5) wherein the petitioner was declared as a Proclaimed Person. The FIR was registered on 26.05.2016. The impugned order declaring the petitioner as Proclaimed Person was passed on 23.11.2016. There is no justification for such a long delay in approaching the Court and for non-appearance of the petitioner before the investigating agency, as well as before the trial Court. The present petition has been filed on 10.10.2022, i.e. after six years of passing the impugned order dated 23.11.2016. As such, there are no plausible grounds to set aside the impugned order dated 23.11.2016 (Annexure P-5).

10. Another prayer has been made by the petitioner for quashing of the FIR and the consequential proceedings on the ground that the complainant at whose instance the FIR was lodged has now got re-married and as per the compromise dated 08.09.2022 (Annexure P-2), she does not want to take any action against the petitioner.

11. I have considered the said prayer. The FIR pertains to the year 2016 is concerned, since the petitioner was declared as a Proclaimed Person, as such, the investigating was halted and the final report ('*challan*') under the provisions of Section 173 Cr.P.C. could not be presented. Merely, on the ground that the prosecutrix has now got married to someone else and settled in life, the present FIR cannot be quashed. The offence is alleged to have been committed against a minor girl and the allegations are of sexual abuse. Merely, on the ground of delay which is attributed to the petitioner, the proceedings cannot be quashed and compromise cannot be accepted in such kind of cases. The medical evidence is against the petitioner. As per the report of chemical examiner, Spermatozoa was detected in the contents of Ex. 1 (a) & (b). The petitioner has been successful in halting the proceedings against him, as he was absconding. He has been declared Proclaimed Offender. The equity is not in favour of the petitioner.

12. The co-ordinate Bench while dealing with the question of quashing of FIR, on the basis of compromise in the matter where Section 8 of the POSCO in Surinder Kumar vs. State of Haryana and others (CRM-M-3397-2021), decided on 11.05.2022, has held that the offences under the Act being heinous in nature will fall under the exceptions as carved out by Hon'ble the Supreme Court in the case of State of Madhya Pradesh vs.

Laxmi Narayan and others (2019) 5 SCC 688. While dealing with the scope of Section 482 of the Code and referring the various decisions by Hon'ble the Apex Court, following observations were made by the co-ordinate Bench:-

*“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 Vs. 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.”

Further in Crl.A.No.263/2022 the Apex Court vide order dated 21.2.2022 deprecated practice of granting bail in the offences punishable under the Act while relying upon grounds namely 'there was a love affair'.

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 Vs. Laxmi Narayan and others (2019) 5 SCC 688, the Apex Court after considering various precedents including Gyan Singh Vs. State of Punjab (2012) 10 SCC 303 and Narender Vs. 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 hereinabove, 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 hereinabove;

v) while exercising the power under section 482 of the Code to quash the criminal proceedings 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.”

*Recently the Apex Court in **Ramgopal and another Vs. The State of Madhya Pradesh in Criminal Appeal No. 1489 of 2012** while reiterating the law laid down in **State of Madhya Pradesh Vs. Laxmi Narayan and others's case** (supra) cautioned the Courts exercising plenary jurisdiction observing that:-*

“We thus sum-up and hold that as opposed to Section 320 Cr.P.C where the Court is squarely guided by the compromise between the parties in respect to offences 'compoundable' within the statutory framework, the extra ordinary power enjoined upon a High Court under Section 482 Cr.P.C or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

(emphasis supplied)

*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 Vs. Laxmi Narayan and others** (supra)”*

13. The co-ordinate Bench further held that the powers granted under Section 482 of the Code cannot be exercised to defeat the purpose of the POCSO Act which has been enacted in discharge of constitutional mandate, as well as obligation arising out of the International Conventions.

14. In view of the facts of the present case and keeping in view the ratio of the aforesaid decision, the present petition has no merits. It is not a case for exercising jurisdiction under Section 482 Cr.P.C, which is extra-

ordinary in nature and should be sparingly used, to promote the ends of justice. Consequently, the present petition stands dismissed.

15. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

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

March 15, 2024
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes/No
Whether reportable	Yes/No