

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

286

CRM-M No.62501 of 2023
Date of decision: 02.04.2024

Kamal

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Rashi Shahrawat, Advocate,
for the petitioner.

Mr. R.K. Singla, DAG, Haryana.

Mr. Vikas Gulia, Advocate,
for respondent No.2.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of FIR No.93 registered under Sections 313, 376 (2) (n), 377 (deleted later on) and 506 of IPC at Police Station Women Police Station, District Gurugram and the proceedings having emanated subsequently therefrom, on the basis of compromise arrived between the petitioner and respondent No.2.

2. As per the allegations, the abovesaid FIR had been registered on the basis of statement recorded by the respondent No.2-complainant on 16.07.2018 alleging therein that she is presently residing in Gurugram on rented accommodation. She is the permanent resident of Uttar

Pradesh. She is already married and from the said wedlock, she has one son aged about 9 years who is residing with her brother and sister-in-law. Her first husband died on 13.10.2014. She alleged that she had made a profile on the matrimonial site 'Rishton ka Sansar', on which, the present petitioner had also made a profile. Conversation had started between the complainant and the petitioner for an arranged marriage and she told everything to the present petitioner for herself and her son. On 28.04.2017, the petitioner put sindoor on her forehead and took her to Supreme Heritage Resort at Manesar. She alleged that she told the petitioner to get married with her before the society but the petitioner by making promise to marry her, developed physical relations with her time to time. She got pregnant. On 23.09.2017, the petitioner forcibly took her to hospital and got her pregnancy terminated and had refused to marry her. The petitioner has already taken divorce from his earlier two marriages. She prayed for taking penal action against the culprit. After registration of FIR, investigation proceedings were initiated.

3. The present petition has been filed by the petitioner on the grounds that a compromise has been effected between the respondent No.2 and himself. No useful purpose would be served by keeping the criminal proceedings pending against the petitioner. Therefore, it is urged that the petition deserves to be allowed.

4. It will not be out of place to mention here that learned counsel for respondent No.2 has also affirmed the fact that a compromise has been arrived at between the complainant and the petitioner. 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 vehemently opposed the prayer made by the petitioner by arguing that there are serious allegations against the petitioner. The offence for which he has 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 be relevant to mention here that vide order dated 16.02.2024 passed by this Court, the parties were directed to appear before the learned trial Court on 01.03.2024 for recording their statements with regard to the compromise/settlement. The trial Court was directed to submit its report. A report has been submitted by the trial Court as per which the statements of the respondent No.2 complainant and the present petitioner had been recorded on 18.03.2024 and the statement of Investigating Officer had been recorded on 01.03.2024. It is also reported that the trial Court was satisfied that the compromise between the parties was genuine and without any undue influence.

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 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

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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 caused to him by not quashing criminal case.

9. In view of the above discussed position of law qua exercise of inherent powers of the High Court for quashing criminal proceedings, this Court has to consider the question as to whether the quashing of FIR in this case can be allowed. The petitioner has been charge sheeted in this case for commission of offences punishable under Sections Sections 313, 376 (2) (n) and 506 of IPC on the allegations that he committed rape upon the respondent No.2 on the pretext of and by making promise to marry her. The offence of 'rape' is defined under Section 375 of IPC setting out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. It will also be relevant to refer to Section 90 of IPC, as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent.

10. It is well settled proposition of law that the 'consent' with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The consent of a women with respect to Section 375 must involve an active

and reasoned deliberation towards the proposed act. The Hon'ble Supreme Court had observed in **Pramod Suryabhan Pawar Vs. State of Maharashtra**, 2019 (9) SCC 608 that in the context of a promise to marry, there was a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of promise which is made in good faith but subsequently not fulfilled. It was held that where the promise to marry was false and the intention of maker at the time of making the promise itself was to deceive the women to convince her to engage in sexual relations and not to abide by the promise, there was "misconception of fact" that vitiated the woman's "consent".

11. It was also observed in the above cited case that breach of promise, could not be held to be a false promise. On the other hand, to hold a promise of marriage to be false promise, it must be proved to be given in bad faith with no intention of being adhered to at the time, it was given and further that the false promise itself must be of immediate relevance, or bear a direct nexus to the women's decision to engage in the sexual act.

12. In view of the above discussed position of law, it is to be seen whether an offence punishable under Sections Sections 313, 376 (2) (n) and 506 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 and the respondent No.2 are major. It has not been indicated from the circumstances of the case that

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the promise given by the petitioner 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 facts as they stand and are not in dispute clearly indicate that the ingredients of offence under Sections 313, 376 (2) (n) and 506 of IPC are not prima facie established and allegations on the face of the record cannot be taken to be true.

13. In similar circumstances, as discussed above, the Hon'ble Supreme Court had allowed quashing of chargesheet and the order taking cognizance thereunder in **Shambhu Kharwar Vs. State of Uttar Pradesh and Anr.**, 2022 (4) RCR (criminal) 493, wherein the appellant had allegedly given a promise to the respondent to marry, had observed that even as per the allegations in the FIR and the charge sheet, ingredients of offence under Section 375 of IPC were absent and relationship of parties was purely of consensual nature and had allowed quashing of charge sheet and cognizance order.

14. 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 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 CrI. 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 settles 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.

15. 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 offence punishable under Sections Sections 313, 376 (2) (n) and 506 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 18.03.2024 confirming the factum of amicable settlement by stating that they have voluntarily arrived at a compromise, in my 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 petitioner is 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 it 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.93 registered under

Sections 313, 376 (2) (n) and 506 of IPC at Police Station Women Police Station, District Gurugram and the consequential proceedings arising therefrom, are ordered to be quashed and the petition stands allowed.

02.04.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No