

(2011) 05 P&H CK 0279

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-4738 of 2011 (O and M)

Balbir Singh through attorney
Smt. Harjit Kaur

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: May 26, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 320(9), 482
- Hindu Marriage Act, 1955 - Section 13
- Penal Code, 1860 (IPC) - Section 302, 34, 406, 498A, 506

Hon'ble Judges: Ritu Bahri, J

Bench: Single Bench

Judgement

Ritu Bahri, J.

This order of mine shall disposed of Crl. Misc. No. M-23112 of 2010 (O&M) and Crl. Misc. No. M-4738 of 201 (O & M) as they arise out of the same F.I.R

2. These petitions have been filed u/s 482 Code of Criminal Procedure for quashing of FIR No. 96 dated 26.03.2008 under Sections 406/498-A/506/34 of IPC, registered at Police Station Jagadhari and all the subsequent proceeding arising therefrom, on the basis of compromise (Annexure P-2)

3. Brief facts of the case are that the marriage of Respondent No. 2 and Balbir Singh was solemnized on 28.11.2003 according to Sikh Rites at Ludhiana and after the marriage, the parties lived and cohabited together as husband and wife at Ludhiana but no child was born out of this wedlock. After marriage, the relations between the Petitioner and his wife got worst and they got separated with each other due to temperamental differences. In the above background, F.I.R was registered against the accused on account of harrasment and torture and demanded a motorcycle and Rs. 30,000/- from the parents of Respondent No. 2

4. After investigation, challan was presented and the charges were framed and the case was fixed at the stage of evidence. However, during the pendency of the trial, the parties have compromised the matter with the intervention of parents of both the parties, respectables and common friends. As per this compromise, they are divorced from each other. Respondent No. 2 has received an amount of Rs. 3,60,000/- towards her present, past and future alimony and maintenance as full and final settlement of istridhan also. Now nothing is due against the Petitioners. Respondent No. 2 has further agreed that she will not claim anything now towards her past, present and future maintenance from the Petitioners nor she will have any right of succession to the estate of property of the Petitioners either movable or immovable. Both the parties have withdrawn all their allegations against each other as matter is compromised between the parties with the intervention of their parents, friends, relatives and mediators. It has been agreed upon by the complainant that she will not pursue the above said FIR against the Petitioners. She has further no objection if the FIR be quashed against the Petitioners. It has further been agreed that the Petitioners is entitled to take/receive any articles/gold ornaments/silver anklets from the police of Police Station Jagadhari or from the Hon"ble Court on sapurdari as these articles do no belong to Respondent No. 2. It has further been agreed that the Petitioners is entitled to get their passports from the Illaqa Magistrate, Jagadhari and the Respondent No. 2 has no objection for releasing the passports to the Petitioners. Compromise deed is Annexure P-2.

5. The decree of divorce has also been granted u/s 13 of the Hindu Marriage Act, 1955 by District Judge, Ludhiana, vide order dated 03.12.2010

6. Learned Counsel for Respondent No. 2 has also put in appearance along with Respondent No. 2 who has tendered the affidavit of Respondent No. 2. As per this affidavit, the matter has been compromised with the intervention of relatives and respectables. Respondent No. 2 has also no objection if the FIR is quashed against the Petitioners.

7. In compliance of order dated 28.02.2011, the parties were directed to appear before the trial Court. Report in this regard has been received from Addl. Chief Judicial Magistrate, Yamunanagar at Jagdhari. As per this report, statements of both the parties have been recorded and they have admitted the factum of compromise. The compromise is without any pressure and they were identified by their counsels.

8. Learned State counsel, on instructions from ASI Prem Chand has informed the Court that Petitioner-husband was declared as Proclaimed Offender on 02.01.2009. Since the matter has been amicably settled and decree of divorce has been granted to the party, so, no useful purpose would be served to send the petition-husband behind the bars and to face the trial.

9. This Court in Sudo Mandal @ Diwarak Mandal v. State of Punjab a Division Bench of this Court vide judgment dated 17.3.2011 had an occasion to examine a case

where three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal were facing trial u/s 302 IPC, and subsequently they had absconded and declared proclaimed offenders. In the trial, accused Sudo Mandal and Dharminder Mandal were convicted by the trial Court. Appeal of accused Sudo Mandal and Dharminder Mandal were allowed by observing that the prosecution had miserably failed to establish its case. While examining the case of the three accused, who had been declared proclaimed offenders, this Court, while exercising the inherent powers u/s 482 Code of Criminal Procedure quashed the proceedings against the absconding accused on the ground that no useful purpose will be served if they are produced and ordered to face the trial.

10. In the above said case the FIR has been quashed qua the co-accused and the co-accused have been acquitted and it would empty formality of trial, which would ultimately lead to their acquittal. In the present case since no useful purpose will be served by asking the Petitioner-husband, who is proclaimed offender to face the trial. The petition filed by their attorney is being entertained.

11. Broad guidelines have been laid down by the Full Bench of this Court in the case of Kulwinder Singh and Ors. v. State of Punjab and Anr. 2007(3) RCR (Cri.) 1052 for quashing the prosecution when parties entered into compromise. The Full Bench has observed that this power of quashing is not confined to matrimonial disputes alone. The relevant portion of the judgment reads as under:

26. In [Mrs. Shakuntala Sawhney Vs. Mrs. Kaushalya Sawhney and Others](#), Hon"ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:

The finest hour of justice arrived propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Code of Criminal Procedure, or any other such curtailment, can whittle down the power u/s 482 of the Code of Criminal Procedure.

28. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power u/s 482 of the Code of Criminal Procedure is used to enhance such a compromise which, in turn, enhances the social emity and reduces friction, then it truly is finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers u/s 482 of the Code of Criminal Procedure in the

event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

12. The Hon"ble Supreme Court in the case of Madan Mohan Abbot v. State of Punjab 2008 (2) RCR (Cri) 429 has examined a case where quashing was sought of an FIR u/s 406 IPC being non-compoundable. The Hon"ble Supreme Court has held that:

1. No useful purpose would be served in continuing with the proceedings in the light of the compromise-There was no possibility of conviction.

2. It is advisable that in the disputes where question involved is of purely personal nature and no public policy is involved-Court should ordinarily accept the compromise.

3. Keeping the matter alive with no possibility of conviction is a luxury which the Courts, grossly overburdened as they are, cannot afford.

13. The Hon"ble Supreme Court in the case of Dr. Arvind Barsaul etc. v. State of Madhya Pradesh and Anr. 2008(2) RCR (Cri) 910 has examined a case where quashing was sought of an FIR u/s 498-A IPC being non-compoundable. The Hon"ble Supreme Court has held that:

Learned Counsel for the parties submitted that the parties have settled their differences. It was submitted on behalf of the complainant Smt. Sadhna Madnawat that she is not interested in prosecuting the Appellants. It may be pertinent to mention that the parties hail from cultured and educated families. It was also submitted that the Appellant's parents are suffering from multiple ailments because of advanced age. The Appellant's father is a retired Professor and Dean, Veterinary College, Mathura and he had undergone transplant of his kidney and the Appellant's mother is suffering from multiple ailments and is virtually bedridden.

14. Consequently, in view of the judgments of the Hon"ble Supreme Court in the case of Madan Mohan Abbot v. State of Punjab (supra) and Dr. Arvind Barsaul etc. v. State of Madhya Pradesh and Anr. the law laid down by the Full Bench of this Court in the case of Kulwinder Singh and Ors. v. State of Punjab and Anr. (supra), applying the ration of Sudo Mandal @ Diwarak Mandal v. State of Punjab (supra) and in view of the statements made by the parties, this Court has no hesitation to quash the present FIR No. 96 dated 26.03.2008 under Sections 406/498-A/506/34 of IPC, registered at Police Station Jagadhari, is quashed with all consequential proceedings arising therefrom qua Petitioners.

Accordingly, the petitions stand disposed of.