

(2022) 04 SHI CK 0046

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 583 Of 2022

Abdul Rehman And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482

Indian Penal Code, 1860 — Section 34, 201, 376, 419, 506

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)(s)

Citation : (2022) 04 SHI CK 0046

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Maan Singh

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. This petition has been preferred under Section 482 Cr.P.C. on the basis of compromise between petitioners and respondent No.2, for quashing of FIR No. 35 of 2020, dated 21.9.2020 registered under Sections 376, 506, 419, 201 and 34 of Indian Penal Code (hereinafter in short 'IPC') and Sections 3(i)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short SC& ST Act) at Women Police Station Una, District Una HP and quashing of proceedings initiated in pursuant thereto pending in the concerned Court.

2 As per prosecution story, complainant "X" was pursuing her Nursing Course in Badera and one and a half years before lodging the complaint by complainant 'X', she met a boy at Bus Stand, who had disclosed his name as Vicky Sharma resident of Nangal. He also met her in Madhuban park Nangal and expressed his intention to marry her and thereafter, he developed physical relations with her by saying that he would marry her. As per complaint, Vicky Sharma was in fact Abdul Rehman, but, he concealed his identity and impersonated as Vicky Sharma

and took the complainant to Sunshine Hotel Una and Searock Hotel Raipur on 2.1.2020 and 15.8.2020, respectively concealing his true identity and made physical relations with her. Later on, another girl 'Y', who was college fellow of 'X', informed 'X' that boy was Abdul Rehman but not Vicky Sharma who had already been engaged with one 'Z'. Thereafter, 'X' went to village of Abdul Rehman and approached his family to solemnize the marriage. But they refused to marry a girl of lower caste and quarrelled with complainant 'X'. Complainant 'X' also visited house of 'Z' with whom marriage of Abdul Rehman was fixed to show the proof of her relations with Abdul Rehman to 'Z', but, 'Z' and her brother Mohammad Raja and mother Samina (petitioners No. 4 to 6) had quarrelled with complainant 'X' and broke her mobile destroying the evidence of relations of 'X' with Abdul Rehman. The incident was reported in Police Chowki Nangal Sector No.2. As per investigation, transactions of money from bank account of complainant 'X' were also found in favour of Abdul Rehman claimed to have given for purchasing a vehicle. After completion of investigation, challan has been presented in Court which is at the stage of framing of charge.

3 During pendency of trial, petitioners/accused persons filed present petition on the basis of compromise arrived at with respondent No.2 whereby she had agreed to withdraw the complaint.

4 Notice was not issued to respondent No.2 to consider the matter firstly on the basis of reply/status report to be filed on behalf of State. However, on 23.12.2021, complainant/respondent No.2 appeared in Court voluntarily in person along with her counsel Mr. Maan Singh, Advocate, and requested the Court to record her statement. Her statement on oath was recorded on that day wherein she stated that she had decided to forget the past and therefore, had forgiven the petitioners/accused persons and thus, she expressed her intention to withdraw the case lodged against the petitioners to dis -continue the criminal proceedings against them and as such she communicated her no objection for quashing the FIR endorsing swearing of affidavit indicating the compromise arrived at between complainant and family of Abdul Rehman and identifying her signatures on photocopy of affidavit. Lastly, she stated that she had compromised the matter out of her free will, consent and also without any kind of threat, pressure or coercion etc.

5 As per status report, petitioner No.1 is accused under Sections 376, 506 and 34 IPC, whereas his family members have been found to have committed the offence under Section 3(i)(s) of SC&ST Act and petitioners No. 4 to 6 are accused under Section 201 IPC.

6 Learned Additional Advocate General has submitted that petitioners/accused are involved in commission of heinous crime and their conduct indicates that offence was committed by petitioner No.1 in connivance with other petitioners/accused persons and petitioner No.1 had impersonated himself and had given false promise to marry, cheated the complainant and violated her person in order to spoil her life and therefore, they are not entitled for leniency and present

petition deserves to be dismissed.

7 Learned counsel for petitioners has pointed out that from contents of affidavit as well as statement made by complainant/respondent No.2 voluntarily, it is evident that case in reality is something else than the facts as mentioned in complaint lodged with police. To substantiate his plea, he has drawn attention of the Court to a photocopy of visitors register of hotel supplied to accused persons along with challan as a document relied upon by prosecution, wherein petitioner Abdul Rehman has correctly recorded his identity as Abdul Rehman as well as that of respondent No.2 by mentioning name of both of them and in remarks column, both i.e. Abdul Rehman and 'X' had put their signatures, He has canvassed that this document indicates that claim of complainant 'X' that petitioner had violated her person by concealing his identity and impersonating himself as Vicky Sharma, is falsified. According to him, it is case of consensual relations and break up thereof for reasons known to the boy and the girl and for that reason only, now girl has stated that she wanted to forget the past and forgive the petitioners. He has submitted that aforesaid document as well as statement of complainant 'X'/victim in Court indicate that it is not a case of forcible violation or violation of person of girl by giving false promise to marry and/or on account of impersonation. Had it been so, there was no occasion for complainant 'X' to visit the village of petitioner No.1 to ask his family to solemnize her marriage with petitioner No.1 and also to visit the village of 'Z', with whom petitioner No.1 was engaged for marriage, for showing proof of her relations with petitioner No.1. All these facts indicate that reality is something else and respondent No.2 is not interested to disclose the reality. In aforesaid circumstances, it has been submitted that present case, in fact, is not a case of commission of offence under Section 376 IPC, and thus, he has prayed for allowing the petition.

8 It has been further contended on behalf of respondent/State that petitioners/accused are not entitled to invoke inherent jurisdiction of this Court to exercise its power on the basis of compromise arrived at between the parties with respect to an offence not compoundable under Section 320 Cr.P.C.

9 Three Judges Bench of the Apex Court in Gian Singh Vs. State of Punjab and Ors. reported in (2012) 10 SCC 303, explaining that High Court has inherent power under Section 482 of the Code of Criminal Procedure with no statutory limitation including Section 320 Cr.P.C., has held that these powers are to be exercised to secure the ends of justice or to prevent abuse of process of any Court and these powers can be exercised to quash criminal proceedings or complaint or FIR in appropriate cases where offender and victim have settled their dispute and for that purpose no definite category of offence can be prescribed. However, it is also observed that Courts must have due regard to nature and gravity of the crime and criminal proceedings in heinous and serious offences or offence like murder, rape and dacoity etc. should not be quashed despite victim or victim family have settled the dispute with offender. Jurisdiction

vested in High Court under Section 482 Cr.PC is held to be exercisable for quashing criminal proceedings in cases having overwhelming and predominately civil flavour particularly offences arising from commercial, financial, mercantile, civil partnership, or such like transactions, or even offences arising out of matrimony relating to dowry etc., family disputes or other such disputes where wrong is basically private or personal nature where parties mutually resolve their dispute amicably. It was also held that no category or cases for this purpose could be prescribed and each case has to be dealt with on its own merit but it is also clarified that this power does not extend to crimes against society.

10 The Apex Court in *Parbatbhai Aahir alias Parbathbhai Bhimsinghbhai Karmur and others vs. State of Gujarat and another*, (2017)9 SCC 641 summarizing the broad principles regarding inherent powers of the High Court under Section 482 Cr.P.C. has recognized that these powers are not inhibited by provisions of Section 320 Cr.P.C.

11 The Apex Court in case *Narinder Singh and others vs. State of Punjab and others* reported in (2014)6 SCC 466 and also in *State of Madhya Pradesh vs. Laxmi Narayan and others* (2019)5 SCC 688 has summed up and laid down principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercise its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with criminal proceedings.

12 No doubt Section 376 IPC is not compoundable under Section 320 Cr.P.C., however, as explained by Hon'ble Supreme Court in *Gian Singh's*, *Narinder Singh's Parbatbhai Aahir's* and *Laxmi Narayan's* cases supra, power of High Court under Section 482 Cr.PC is not inhibited by the provisions of Section 320 Cr.PC and FIR as well as criminal proceedings can be quashed by exercising inherent powers under Section 482 Cr.PC, if warranted in given facts and circumstances of the case for ends of justice or to prevent abuse of the process of any Court, even in those cases which are not compoundable where parties have settled the matter between themselves.

13 In *Madan Mohan Abbot vs. State of Punjab*, (2008)4 SCC 582 the Hon'ble Supreme Court emphasized and advised that in the matter of compromise in criminal proceedings, keeping in view of nature of this case, to save the time of the Court for utilizing to decide more effective and meaningful litigation, a commonsense approach, based on ground realities and bereft of the technicalities of law, should be applied.

14 Keeping in view material placed before the Court, especially the statement of the complainant, who appeared in person and stated on oath that she has decided to forget the past and therefore, she has forgiven the petitioners/accused persons and also wanted to withdraw the case lodged against petitioners

and to discontinue the proceedings pending against them for which she has no objection for quashing the FIR, I find that it is a fit case to exercise power under Section 482 Cr.P.C. and further even otherwise, in view of statement of the complainant, if criminal proceedings are allowed to continue, no fruitful purpose is going to be served.

15 Considering facts and circumstances of the case in entirety, I am of the opinion that present petition deserves to be allowed for ends of justice and the same is allowed accordingly and FIR No. 35 of 2020 dated 21.9.2020 registered against the petitioners/accused at P.S. Women Police Station Una, District Una H.P. is quashed. Consequent to quashing of said FIR, criminal proceedings pending in the concerned Court are also quashed.

15 Petition stands disposed of in above terms, so also pending application, if any.

The parties are permitted to produce copy of order downloaded from the High Court website and the concerned authority shall not insist for certified copy of the order, however, they may verify the order from the High Court website or otherwise.