
(2010) 08 P&H CK 0164
In the Punjab And Haryana At Chandigarh

Harvinder Singh	Vs	APPELLANT
State of Punjab and Another		RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 376

Citation : (2010) 08 P&H CK 0164

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jaswant Singh, J.—Present petition u/s 482 Code of Criminal Procedure is for quashing of FIR No. 44 dated 18.10.2009 u/s 376 of the Indian Penal Code, registered with Police Station Garhdiwal, District Hoshiarpur and the subsequent proceedings on the basis of compromise dated 13.4.2010(Annexure P-2) arrived at between the accused/petitioners and the complainant.

2. In the FIR complainant Smt. Shama Rani had made allegations against the accused-petitioner that in the year 1997 she was married to one Davinder, resident of Amritsar and had two kids from him. Around four years back she got divorce from him as he used to beat him and the kids are with Davinder. Thereafter she was married to one Mukesh Anand, resident of Pritam Nagar, Kartarpur, District Jalandhar and during that period she came into contact with petitioner/accused Harvinder Singh @ Lovely. She thereafter divorced her second husband as he was handicapped. It is alleged that petitioner Harvinder Singh @ Lovely used to say that he would marry the complainant and under this garb, he used to commit rape with her whenever she used to go to Lovely's house. He(petitioner) used to sexually abuse her and now he has refused to marry her.

3. Upon notice Mr. G.P. Singh Ahluwalia, Advocate has put in appearance on behalf of respondent No. 2. Respondent No. 2 is also present in the court, who has been identified by her counsel. She has filed an affidavit dated 25.08.2010

which is taken on record. In the affidavit she has stated that the dispute between the petitioner-accused and her has been amicably settled and she does not wish to prosecute the petitioner any further and has no objection if the aforementioned FIR is quashed. Her statement has also been recorded separately.

4. Learned State Counsel on instructions from HC Parvinder Singh also submits that the challan in the present case is yet to be presented.

5. A bare reading of FIR, in my opinion reveals that no offence u/s 376 Indian Penal Code is made out. It cannot be believed that the complainant is so gullible that she could be induced into having sexual relations with Harvinder @ Lovely(petitioner) simply on the pretext of marriage. It cannot be disputed that the complainant is a woman with two kids and has undergone two divorces. It is also not disputed that she came into contact with petitioner Harvinder Singh during her second marriage with a handicapped person. It is further clear from the allegations that the complainant and the petitioner had sexual relations over a period of time. Thus it cannot be inferred that the complainant was not a consenting party.

6. Still further keeping in view the fact that complainant does not wish to pursue the matter any further no useful purpose would be served in continuing with the proceedings, accordingly the FIR is liable to be quashed.

7. A Full Bench of this Court in Kulwinder Singh and Ors. v. State of Punjab and Anr. 2007 (3) RCR (Criminal) 1052 has held that this Court, in appropriate cases, while exercising powers u/s 482 Cr.P.C., may quash an FIR disclosing the commission of non-compoundable offences. The relevant extracts read as under:

The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C., which can affect the inherent power of this Court u/s 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar u/s 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.

8. Similar views were expressed by Hon"ble the Apex Court in Madan Mohan Abbot Vs. State of Punjab, , the relevant extract of which is as under:

We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

9. Keeping in view the above settled legal position and taking into account the fact (i) that both the parties have desired to live in peace and harmony and carry

on with their lives without any ill will or rancor by resolving their differences and entering into the aforesaid compromise;(ii) that from the allegations in the FIR no offence u/s 376 of IPC is made out as discussed hereinabove, it is evident that it is a fit case where there is no impediment in the way of the Court to exercise its inherent powers u/s 482 Cr.P.C., for quashing of the FIR in the interest of justice.

10. Accordingly, the present petition is allowed and FIR No. 44 dated 18.10.2009 u/s 376 of the Indian Penal Code, registered with Police Station Garhdiwal, District Hoshiarpur and all subsequent proceedings arising therefrom, are quashed.