

263/3 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M- 3397-2021(O&M)
Decided on: May 11, 2022

Surinder Kumar

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Arpandeeep Narula, Advocate
for the petitioner.

Ms. Sheenu Shura, DAG., Haryana.
for the respondents.

Pankaj Jain, J (Oral)

By way of present petition, the petitioner is seeking quashing of FIR No.6 dated 14.01.2019 registered under Sections 452 and 506 of IPC and Section 3 of SC/ST Act and Section 8 of POCSO Act, 2012 at Women Police Station Dabwali, Sirsa, on the basis of compromise dated 11.01.2021.

The question arises as to whether FIR registered for offences punishable under POCSO Act can be quashed on the basis of compromise exercising jurisdiction under Section 482 Cr.P.C.

Counsel for the petitioner has relied upon the order passed in CRM-M-36158 of 2015 dated 1.12.2015 passed by a co-ordinate Bench of this Court wherein the FIR was quashed relying upon the law laid down by the Apex Court in **Shiji @ Pappu and others Vs. Radhika and others 2012 (1) RCR CrI. 9** and that in CRM-M-12404 of 2018 dated 4.12.2018 wherein the FIR registered for offences punishable under including those of POCSO Act was quashed on the basis of compromise while relying upon the law laid down by the Apex court in the case of **Gian singh Vs.State of Punjab and another 2012 (4) (RCR) 543** and order passed by the High Court of Kerala in **CrI.MC.No.5636 of 2019 titled as Hafsal Rehman N.K.**

Vs. State of Kerala and others.

I have heard learned counsel for the parties and have gone through the records of the case.

It needs to be noticed here that in the aforesaid three precedents relied upon by the counsel for the petitioner, question with respect to quashing of offences punishable under the POCSO Act (for short 'the Act') on the basis of compromise has not been addressed. Further in all fairness to the counsel for the petitioner it needs to be observed that while relying upon the judgment passed by Kerala High Court, Apex Court in the case of **The State of Kerala and another Vs. Hafsal Rehman N.K. and others** he very fairly brought to the notice the Court the order passed by the Apex Court in SLP 24362/ 2021 dated 3.12.2021 whereby order passed by Kerala High Court in **Hafsal Rehman's case (supra)** has been stayed and the investigation has been allowed to be continued.

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 CrI.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)**.

Another thing that needs to be noticed is that in the case of child the compromise affected between the parents cannot be recognized. Any agreement/compromise executed by the child (till the age of majority) himself/herself as in the present case will be void ab initio and thus cannot be accorded validity. Parents cannot be allowed to compromise the dignity of a child by an agreement. Where ever and whenever in a society governed by rule of law the question will arise: who will protect from the protector? The only and obvious answer will be-LAW.

“Children are human beings to whom respect is due, superior to us by reason of this innocence and of the greater possibilities of their future”

Maria Montessori

It is the aforesaid ethos that stands embedded in the Constitution of India by the founding fathers and the POCSO Act recognizes this.

The compromise affected by the child and/or her parents, compromising the dignity of the child cannot be raised to a status where it defeats the very object of the Act. Power granted under Section 482 Cr.P.C cannot be exercised to defeat the purpose of an enactment enacted in discharge of Constitutional mandate as well as obligation arising out of International Conventions.

Consequently, this Court finds that the FIR registered for offences punishable under the Act cannot be quashed on the basis of compromise.

Resultantly, the present petition is dismissed being devoid of merits.

Keeping in view the facts and circumstances of the case, the

trial court is directed to expedite the trial and conclude the same preferably within a period of six months from the date of receipt of certified copy of this order.

(PANKAJ JAIN)
JUDGE

May 11, 2022
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Whether speaking/reasoned	Yes
Whether reportable	Yes

