

Before Suvir Sehgal, J.

MAHINDER KUMAR—Petitioners

versus

STATE OF HARYANA AND ANOTHER—Respondents

CRM-M No.48694 of 2021

November 22, 2021

Code of Criminal Procedure, 1973 – S.482 – Indian penal Code, 1860 – S. 323 and 506 – Protection of Children from Sexual Offences Act 2012 – S.10 – quashing of an FIR on the basis of a compromise – Dismissed – Held, quashing of an FIR of the heinous crime on the basis of a compromise is against the spirit behind the POCSO Act – The tone and tenor of the compromise affidavit showed that it was executed simply with the objective of getting the petitioner released on bail as the victim was the minor daughter of the petitioner.

Held, that the allegations levelled against the petitioner, who is the husband of the complainant, are grave and serious. Specific instance of touching inappropriately and attempt to sexually exploit the daughters, one of whom is a minor, under the influence of liquor has been given by the complainant in the FIR. No doubt, the complainant is alleged to have entered into a compromise (Annexure P-2) with the petitioner, which is supported by her affidavit (Annexure P-3), but the tone and tenor of the affidavit shows that it has been executed simply with the objective of getting the petitioner, who is in custody, released on bail. There is no denial of the incidents alleged in the complaint on the basis of which, the FIR has been registered. Keeping in view the shocking nature of allegations, more so, since they involve a minor girl, who is the daughter of the petitioner, the FIR cannot be permitted to be quashed on the basis of a compromise, the genuineness and veracity of which is doubtful.

(Para 4)

Gautam Kaile, Advocate, *for the petitioner.*

Mahima Yashpal, DAG, Haryana for respondent No.1.

Amrit Kashyap, Advocate and Arvind Kashyap, Advocate
for the complainant-respondent No.2.

SUVIR SEHGAL J.

(1) Instant petition has been under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No.0054 dated 02.04.2021 registered for offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short “POSCO Act”) and Section 323, 506 of Indian Penal Code, 1860 at Women Police Station Yamuna Nagar, District Yamuna Nagar, in view of compromise deed dated 16.09.2021 (Annexure P-2) and affidavit dated 16.09.2021 (Annexure P-3) of the complainant-respondent No.2.

(2) Heard counsel for the parties.

(3) FIR (Annexure P-1) has been registered on the application of complainant-respondent No.2, against her husband, Mahinder Kumar, present petitioner, of physically abusing and trying to have illicit relation with his daughters. It has been stated in the complaint that the petitioner is a drug-addict and has an adulterous relations with Suman. The petitioner has been physically assaulting and forcing the complainant to leave the matrimonial home and also hits his children. The complainant has stated that two of her daughters are married and the petitioner has molested the younger daughter Nxxx (name withheld), touched her inappropriately and tried to have physical relations with her. The complainant has stated that he has been threatening the younger daughter and forbade her from disclosing the incident to anyone. On 23.03.2021, the petitioner came home in an inebriated state, started abusing the complainant and tried to throttle her. When her elder daughter tried to rescue her, the petitioner caught hold of his daughter and misbehaved with her. The complainant and her son, saved the daughter from the clutches of the petitioner, who assaulted them and kicked the complainant. On hearing the commotion, the neighbours came to their help. They arranged a vehicle and took them to the hospital for treatment. The complainant has alleged that the petitioner is ill-intentioned with regard to his daughters.

(4) The allegations levelled against the petitioner, who is the husband of the complainant, are grave and serious. Specific instance of touching inappropriately and attempt to sexually exploit the daughters, one of whom is a minor, under the influence of liquor has been given by the complainant in the FIR. No doubt, the complainant is alleged to have entered into a compromise (Annexure P-2) with the petitioner, which is supported by her affidavit (Annexure P-3), but the tone and tenor of the affidavit shows that it has been executed simply with the objective of getting the petitioner, who is in custody, released on bail. There is no denial of the incidents alleged in the complaint on

the basis of which, the FIR has been registered. Keeping in view the shocking nature of allegations, more so, since they involve a minor girl, who is the daughter of the petitioner, the FIR cannot be permitted to be quashed on the basis of a compromise, the genuineness and veracity of which is doubtful.

(5) Supreme Court in *The State of Madhya Pradesh versus Laxmi Narayan and others*¹ has observed as under:-

“15.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(1) When the parties have reached the settlement and on that

basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(2) Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.”

(6) The Apex Court has observed that heinous crimes cannot be quashed by the High Court by exercising power under Section 482 Cr.P.C., even if a compromise has been entered into

¹ (2019) 5 SCC 688

between the parties. Moreover, permitting the quashing of FIR would be against the spirit behind the POCSO Act, which has been incorporated to protect children of tender age from abuse and exploitation.

(7) Finding no merit in the petition, it is accordingly dismissed.

(8) It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merit of the case.

Dr. Payel Mehta