

**Present: Mr.Vivek Goyal Advocate Vs. Vikram Singh ..... Petitioner**

**Present: Mr.Vivek Goyal Advocate Vs. Vikram Singh ..... Petitioner**

**SooperKanoon Citation :** [sooperkanoon.com/1061331](http://sooperkanoon.com/1061331)

**Court :** Punjab and Haryana

**Decided On :** Aug-05-2013

**Appellant :** Present: Mr.Vivek Goyal Advocate

**Respondent :** Vikram Singh ..... Petitioner

**Judgement :**

Crl.

Misc.

not M 2528.o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH -.- Crl.

Misc.

not M 2528.of 2013 Date of decision:

05. 08.2013 Vikram Singh .....Petitioner Versus State of Haryana and others  
.....Respondent(s) Coram: Hon'ble MRS.Justice Rekha Mittal -.- Present:  
Mr.Vivek Goyal, Advocate for the petitioner -.- 1.

Whether Reporters of local papers may be allowed to see the judgment?.

2. To be referred to the Reporter or not?.

3. Whether the judgment should be reported in the Digest?.

**Rekha Mittal, J.**

Through the present petition filed under Section 482 of the Code of Criminal Procedure (in short, 'the Code').the petitioner prays for quashing of FIR No.212 dated 05.10.2012 unde Sections 363, 366, 376, 493, 34 IPC, registered at Police Station Chandimandir, District Panchkula on the basis of compromise as per Annexure P2.

Counsel for the petitioner submits that respondent No.2 and the petitioner were in love with each other for long time and they decided to marry, but the parents of respondent No.2 did not give consent.

The petitioner and respondent No.2 left their houses and started living as husband and wife and they stayed together for about 11 months.

They decided to marry each other but due to temperamental differences, they Crl.

Misc.

not M 2528.o

2. started quarrelling and in the month of September 2012, respondent No.2 went back to her parental home.

The petitioner is still ready and willing to marry respondent No.2 but respondent No.2 under some wrong belief lodged the aforesaid FIR against the petitioner.

It is further submitted that with the intervention of respectables and family membeRs.the petitioner and the complainant have entered into a compromise whereby she has decided not to prosecute the criminal proceedings and get the FIR quashed.

The last submission made by counsel is that keeping in view the decision taken by the complainant and the fact that the parties have decided to go ahead in their life and to forget their past, respondent No.2 may be summoned and the FIR and

proceedings emanating therefrom may be quashed.

In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India in 'Prashant Bharti v.

State of NCT of Delhi', 2013(3)RCR(Criminal)399, and 'Deepak Gulati v.

State of Haryana', 2013(3)RCR(Criminal) 97.

It has been submitted that this Court in cases registered under Section 376 of the Code has permitted quashing of the FIR.

For this purpose, he has referred to 'Surinder Kamboj and others v.

State of Punjab and another', 2008(1) RCR(Criminal) 21, 'Harpal Singh alias Soni v.

State of Haryana and otheRs.2008(4)RCR (Criminal) 459, 'Chander Mohan alias Bunti v.

State of Haryana and others', 2011 (5)RCR(Criminal)233 and 'Subegh Singh v.

State of Punjab and otheRs.(CRM M 596.of 2013, decided on 21.05.2013).I have heard counsel for the petitioner and perused the case file.

Before addressing the agruments in the light of judgments cited by counsel, it is appropriate to mention that the instant case has been registered on the statement of the prosecutrix.

As per allegations, the Crl.

Misc.

not M 2528.o

3. prosecutrix was born on 8.02.1996 and on 17.12.2011, while she was on way to her school, at about 7.30 am, the petitioner came in Bolero car and enticed her away.

The petitioner under threat obtained her signatures on blank papers. The petitioner represented that he would perform marriage with her and his parents, namely, Heero Devi and Parmal Singh also assured that they would perform her marriage with Vikram Singh.

For 11 months, she stayed with Vikram Singh and they had physical relations.

Whenever she asked them about marriage, it was told that she has not attained marriageable age, the marriage will be performed after she becomes major.

Later, when she raised demand for performance of marriage, she was subject to beatings by the petitioner and his parents, who proclaimed that as she does not belong to their brotherhood not her family's financial status is equal to their, she is not eligible to be married with Vikram Singh and was turned out of the house on 26.09.2012.

A perusal of allegations in the FIR reveals that the prosecutrix was less than 16 years of age on the date of occurrence, when she was taken away by the petitioner and asked her for sexual intercourse on a promise to marry her.

The prosecutrix being less than 16 years of age, therefore, her consent to sexual intercourse, on a promise to marry or otherwise, would not absolve the petitioner of his criminal liability for committing a heinous offence of rape.

In Prashant Bharti's case (supra) the accused committed rape with a married woman on a false promise to marry the prosecutrix.

Hon'ble the Supreme Court of India held that evidence showed that prosecutrix was a consenting party and was in relation of adultery with accused and in those circumstances, the FIR was found to be false and ordered to be quashed.

The facts of the referred authority are completely Crl.

Misc.

not M 2528.o

4. distinct and distinguishable from the facts of the case in hand, therefore, the observations in the referred authority, have got no bearing on the case in hand.

In 'Deepak Gulati's case (supra).the prosecutrix was 19 years of age and the accused committed sexual intercourse on promise to marry.

The father of the prosecutrix made a complaint.

Keeping in view the fact that the prosecutrix eloped with the accused with an intention to perform marriage which could not be solemnized as the accused was arrested on a complaint made by father of the prosecutrix, the Court held that accused could not keep the promise to marry for reasons beyond his control, he was not held guilty of the offence charged against him.

Hon'ble the Supreme Court, in a recent judgment in 'Gian Singh v.

State of Punjab and another', 2012(4)RCR(Criminal)543, while dealing with powers of the High Court under Section 482 of the Code in regard to quashing of criminal proceedings, made the following observations:- 57.

The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code.

Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court.

In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim Crl.

Misc.

not M 2528.o

5. have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed.

However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime.

Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute.

Such offences are not private in nature and have serious impact on society.

Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. cannot provide for any basis for quashing criminal proceedings involving such offences.

But the criminal cases having overwhelmingly and pre- dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute.

In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete CrI.

Misc.

not M 2528.o

6. settlement and compromise with the victim.

In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

A perusal of relevant extract from the aforesaid judgment would reveal that Hon'ble the Apex Court has categorically laid down that heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute.

It is further held that such offences are private in nature and have serious impact on society.

The judgments of this court relied upon by counsel for the petitioner in the cases of Surinder Kamboj, Harpal Singh alias Soni and Chander Mohan alias Bunti (supra) were rendered in view of the peculiar facts and circumstances of those cases and the Court allowed quashing of the criminal proceedings before the decision in Gian Singh's case (supra). However, in Subegh Singh's case, decided on 21.05.2013, this Court allowed quashing of criminal case under Section 376 IPC, after noticing the decision in Gian Singh's case (supra). In Surinder Kamboj's case (supra), this Court allowed quashing as the prosecutrix had taken different stand at different stages of the case.

She fiRs. approached Human Rights Commission but then Crl.

Misc.

not M 2528.o

7. withdrew her complaint when it was found not substantiated on inquiry.

She then approached this Court for proper inquiry into the FIR, but again changed her stand by moving application for withdrawing her petition.

The matter was inquired into under the directions of Human Rights Commission and it was found that the allegations are not substantiated.

The court found that the prosecutrix had been playing into the hands of some persons and has been used as pawn in some political game.

Keeping in view these facts and circumstances, the Court allowed quashing of FIR in view of the compromise effected between the parties.

In Harpal Singh alias Soni's case (supra).three persons were arrayed as accused, including petitioner Harpal Singh alias Soni.

Two persons faced trial and were acquitted of the offence charged against them.

Harpal Singh alias Soni was declared as proclaimed offender as he was in Italy from 27.05.2006 till 23.01.2008.

This Court keeping in view the acquittal of two co-accused in the same FIR, after trial and the fact that the matter in dispute had been settled between the parties, ordered quashing of the FIR.

In Chander Mohan alias Bunti's case (supra).this Court allowed quashing of FIR for the reasons recorded in para 10 of the judgment, which reads as follows:- 10.

Quashing herein is at the instance of victim herself.

She wants to forget her past.

For continuing the trial, she will have to make various visits to the Court.

It is an offence which is degrading for the victim as well.

Her father and brother are standing by her side supporting her and equally concerned that she must be allowed to move on with her life.

Both the petitioner and CrI.

Misc.

not M 2528.o

8. victim were minor.

They both need protection and require to be treated differently and helped to forget the trauma than be forced to go through it.

The only way to forget it is by closing the chapter once for all.

Thus, there is no hesitation in accepting the compromise in the peculiar facts of the present case.

In Subegh Singh's case (supra).the Court allowed quashing after the decision by Hon'ble the Supreme Court in Gian Singh's case (supra) and recorded following observations:- In the present case, petitioner is aged 19 years whereas, respondent No.3-Manpreet Kaur is not aged about 17 years.Petitioner as well as respondent No.3 had eloped with a view to get married, however, before they could perform marriage, they were apprehended by the police.

Now, parties want to move on in life and have amicably settled their dispute.

The petitioner cannot take advantage to his contention from the referred authorities in the face of clear findings in 'Gian Singh's case (supra) that serious offences like murder, rape, dacoity etc.cannot be quashed even though the victim and the victim's family and the offender have settled the dispute.

This apart, the prosecutrix was less than 16 years of age on the date of occurrence.

Any consent given by her, influenced by a false promise made by the petitioner to perform marriage, would not be a mitigating circumstance to allow the petitioner to seek indulgence of this Court in exercise of extra ordinary jurisdiction under Section 482 of the Code.

The prosecutrix has not attained the age of majority.

She cannot be competent to enter into any settlement.

CrI.

Misc.

not M 2528.o

9. In the light of aforesaid discussion, this Court does not find it a fit case to allow quashing of criminal proceedings on the basis of compromise.

It is sad as well as shocking that the parents of the minor have adopted a very callous and indifferent approach towards the entire matter.

The petitioner has failed to keep up his promise to marry her and loss of precious possessions such as virginity, honour and dignity can neither be restored nor compensated.

For the reasons recorded hereinabove, the petition is dismissed in limine.

(Rekha Mittal) Judge 05.08.2013 mohan

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**