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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

\*\*\*\*

CRM-M-27082-2020

Date of Decision: 05.11.2020

Gurpreet Singh and another

Petitioners

Versus

State of Punjab and another

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Gurinder Singh Goraya, Advocate for the petitioners.

Ms. Samina Dhir, Deputy Advocate General, Punjab.

Mr. Anupinder Singh Brar, Advocate  
for the respondent No. 2.

**Avneesh Jhingan, J. (Oral)**

The matter is taken up for hearing through video conference due to COVID-19 situation.

The present petition is filed for quashing of FIR No. 130, dated 23<sup>rd</sup> July, 2020 under Sections 313, 314 and 316 of the Indian Penal Code, 1860 ('IPC') registered at Police Station Khilchian, District Amritsar on the basis of compromise between the petitioner and respondent No. 2.

The FIR was at the instance of Sukhpal S/o Mehinga Ram. It was stated that his daughter Jyoti was married to Gurpreet Singh for last five years. There was one daughter aged 2 years. Jyoti conceived and at relevant time was four months pregnant. She had a talk with her mother that her husband has got conducted scanning and found that she was carrying a female foetus. He was asking to abort the pregnancy as they

were already having a daughter. It was alleged that on 16<sup>th</sup> July, 2020, Gurpreet Singh, in connivance with his elder sister Veero aborted the pregnancy, consequently there was an infection and Jyoti was admitted to Guru Nanak Dev Hospital, Amritsar where she died on 23<sup>rd</sup> July, 2020.

The petitioners are husband and sister-in-law of the deceased. The private respondent is the complainant.

A compromise has been entered into stating that on the intervention of the respectables, the complainant found that petitioners were not guilty and there is no objection if the FIR is quashed.

Learned counsel for the petitioners submits that there is no allegation of forcible abortion; no *mens rea* is involved and the allegations in the FIR are vague. It is further submitted that as the matter has been compromised, the trial would be a futile exercise.

Learned counsel for the private respondent submits that there is no objection in case FIR is quashed.

Learned State counsel has filed a reply. She opposes the quashing of FIR and relies upon the pleadings in the reply to submit that cause of the death was 'septicemic shock as a result of complication of perforation of uterus and sigmoid colon'. She further submits that the information was sent to the Civil Surgeon, Amritsar regarding the case for illegal abortion. She contends that the petitioners have been absconding and are not traceable, hence there was no headway in the investigation.

There is no quibble on the proposition that under Section 482 of Cr.P.C., even non-compoundable offences can be quashed on the basis of a compromise. The pre-requisite is that it should be to meet the ends of justice and to see that process of law is not abused. However, for offences

toward society, power under Section 482 of Cr.P.C. is not to be invoked for quashing the FIRs. The inherent powers of the High Court should not be used capriciously. The decision to continue with the trial in such cases has an over riding effect of public interest in such serious offences. The mere fact that petitioners entered into a compromise with the complainant did not absolve them from their criminal liability.

In the present case, the allegations are of the menace of female foeticide which has prevailed in the society since long. In spite of the fact that to curb the pre-diagnostic sex determination, the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 ('PCPNDT Act') was enacted but it is a well known fact that still the practice of aborting the foetus after determination of its sex is continuing. The offences allegedly committed in the present case is not merely *in personam* but it is the offence affecting the society. If the allegations are found to be correct, the women of future was deprived of the lease of life to enable her to see the day light. The matter needs deeper probe. It may be a case not only of the IPC but also where the provisions of other Act may be involved.

As per Section 3 (4) (b) of the Medical Termination of Pregnancy Act, 1971, no pregnancy can be terminated without the consent of pregnant woman. In view of these provisions, the contention raised that there is no allegation of forcible abortion cannot be accepted. The consideration would be consent of pregnant woman.

The Supreme Court in ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another, 2017 AIR (SC) 4843*** has expounded principles governing the exercise of powers under Section 482 of Cr.P.C. The relevant portion is reproduced as

under:-

*“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :*

*(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;*

*(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*

*(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;*

*(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;*

*(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;*

*(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been*

*settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;*

*(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;*

*(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;*

*(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

*(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

*(emphasis supplied)*

Considering the gravity of offences and nature of allegations

of aborting the female child and consequential loss to life of the expecting mother does not call for interference under Section 482 of the Cr.P.C. for quashing of FIR. Power under Section 482 of Cr.P.C. is not to be invoked to work as a deterrent for people involved in female foeticide.

The contention of learned counsel for the petitioner that the trial would be a futile exercise deserves rejection. It would not be a sole consideration at this stage for quashing the FIR. The outcome of the trial would depend upon investigation and evidence collected therein.

The petition is dismissed.

It may be noted here that though the information was sent to the Civil Surgeon, Amritsar on 22<sup>nd</sup> July, 2020 but the said matter has not been proceeded with. Considering the serious nature of the complaint, it is expected that appropriate steps would be taken by the authorities concerned. It is expected that they would put all efforts to ensure strict implementation of the provisions of PCPNDT Act and to save the society from the ill effects/ consequences of declining gender ratio.

[AVNEESH JHINGAN]  
JUDGE

5<sup>th</sup> November, 2020

*pankaj baweja*

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|-------------------------------|---|-----|
| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable         | : | Yes |