

CRM-29714-2024 in CRM-M-1192-2024

VS.

STATE OF PUNJAB AND ANOTHER

Present : Mr. Atul Goyal, Advocate
for the non-applicant/petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. S. K. Kanojia, Advocate
for the applicant/respondent No.2.

1. Prayer in this application is for recalling of order dated 29.02.2024, passed by this Court, whereby, while allowing the main petition, the impugned FIR was quashed.

2. It is argued by learned counsel for the applicant/respondent No. 2 that after procuring the aforesaid order from this Court, the petitioner has not complied with the terms of the compromise as he has not performed marriage with the applicant, despite her making several requests. Rather, he has flatly refused to do so.

3. Reply has been filed by the petitioner to the application. It is argued by learned counsel for the petitioner that he was very much willing to perform marriage with respondent No. 2 but subsequently, he had come to know that previously also, she had got registered an FIR with similar allegations against another person and it was due to infidelity and immoral relation of respondent No. 2 with multiple men that the petitioner could not fulfil the above condition as it was not possible for him to spend his entire life with a woman of such character. Even otherwise, as per settled law, the review of the aforesaid order is not maintainable in view of bar created under Section 403 of BNSS.

4. This Court has heard the rival submissions.

5. Before proceeding further, it would be appropriate to reproduce the

operative part of the order dated 29.02.2024, which reads as under:

“9. In view of the above discussed position of law qua exercise of inherent powers of the High Court for quashing criminal proceedings, this Court has to consider the question as to whether the quashing of FIR in this case can be allowed. The petitioner has been charge sheeted in this case for commission of offences punishable under Sections 506, 376 and 328 of IPC on the allegations that he repeatedly committed rape upon the respondent No.2 on the pretext of and by making promise to marry her. The offence of ‘rape’ is defined under Section 375 of IPC setting out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of Section 375, ‘consent’ means an unequivocal voluntary agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. It will also be relevant to refer to Section 90 of IPC, as per which a ‘consent’ given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent.

10. It is well settled proposition of law that the ‘consent’ with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The consent of a women with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. The Hon’ble Supreme Court had observed in **Pramod Suryabhan Pawar Vs. State of Maharashtra**, 2019 (9) SCC 608 that in the context of a promise to marry, there was a distinction between a false promise given on the understanding by the maker

that it will be broken, and the breach of promise which is made in good faith but subsequently not fulfilled. It was held that where the promise to marry was false and the intention of maker at the time of making the promise itself was to deceive the woman to convince her to engage in sexual relations and not to abide by the promise, there was "misconception of fact" that vitiated the woman's "consent".

11. It was also observed in the above cited case that breach of promise, could not be held to be a false promise. On the other hand, to hold a promise of marriage to be false promise, it must be proved to be given in bad faith with no intention of being adhered to at the time, it was given and further that the false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

12. In view of the above discussed position of law, it is to be seen whether a case for commission of offences punishable under Sections 506, 376 and 328 of IPC has been made out even on assuming all the allegations as set out in the FIR to be correct. In my considered opinion, the answer should be in the negative. The petitioner and the respondent No.2 are major. It has not been indicated from the circumstances of the case that the promise given by the petitioner to marry the respondent No.2 at the very inception of relationship of the parties was false and on the basis of the same, she was induced into sexual relationship. As such, their relationship can be considered to be purely of consensual nature. The facts as they stand and are not in dispute clearly indicate that the ingredients of offences under Sections 506, 376 and 328 of IPC are not prima facie established and allegations on the face of the record cannot be taken to be true.

13. In similar circumstances, as discussed above, the Hon'ble Supreme Court had allowed quashing of

chargesheet and the order taking cognizance thereunder in **Shambhu Kharwar Vs. State of Uttar Pradesh and Anr.**, 2022 (4) RCR (criminal) 493, wherein the appellant had allegedly given a promise to the respondent to marry, had observed that even as per the allegations in the FIR and the charge sheet, ingredients of offence under Section 375 of IPC were absent and relationship of parties was purely of consensual nature and had allowed quashing of charge sheet and cognizance order.

14. Reference can also be made to **Ananda D.V. Vs. State and another**. 2021 All SCR (Criminal) 1175, wherein the gravamen of the allegations in the FIR filed by the private respondent was that the appellant accused had promised that he would marry her, which promise was not kept by him. The parties resolved their dispute after registration of FIR and had got married. The Apex Court took an overall view of the matter and allowed quashing of FIR and all the steps taken on the basis of impugned FIR were ordered to be treated as effaced from the record in law; to **Vaibhav Bhalotia v. State of UT, Chandigarh and another**, 2023 (2) RCR (Criminal) 381, wherein the victim of sexual assault had married the petitioner and they were happily residing together after solemnizing the marriage. A Coordinate Bench of this Court while considering the peculiar facts and circumstances held that it would be to secure the ends of justice in the light of amicable settlement having been effected between the parties and it will be for the welfare of the parties and would further tend to strengthen the healthy matrimonial relationship between them that the quashing of proceedings deserve to be allowed and had allowed the same.

15. It is also considered to be important to mention here that the inherent power given to High Court under Section 482 of Cr.P.C. is with the purpose and object of

advancement of justice. The touchstone for exercising that power would be to secure the ends of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered in accordance with the law enacted by the Legislature. The concept of justice is elastic and imprescriptible. There can be no hard and fast line constricting the power of the High Court to do substantial justice. The restrictive construction of inherent powers under Section 482 of Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may instead lead to grave injustice. Nonetheless such powers of wide amplitude ought to be exercised carefully in the context of quashing proceedings, bearing in mind, the nature and effect of the offence on the consciousness of the society; the seriousness of the injury, if any; voluntary nature of compromise between the accused and the victim; and conduct of the accused persons, prior to and after the occurrence of the purported offence or other relevant considerations. Reference in this regard can be made to a recent judgment of High Court of Kerala pronounced on 16.11.2023 in CrI. MC No.7497 of 2023, **Kahar and others v. State of Kerala and others**, wherein it was observed that the viability of quashing a criminal proceeding on the ground that the accused and victim of sexual assault settle the dispute, resolves ultimately around the facts and circumstances of each case and no straitjacket formula can be formulated. It was further observed that where the High Court has such facts on record which clearly exhibit that the criminal prosecution involving non-compoundable sexual offences against women and children will result in greater injustice to the victim, its closure would only promote her well being, and the possibility of a conviction is remote, it can indubitably evaluate the consequential effects of the offence beyond the body of

an individual and thereafter adopt a pragmatic approach and very well decide to quash such proceeding upon a compromise between the accused and the victim after taking into account all relevant facts.

16. On considering the peculiar facts and circumstances of the case as noted above, while keeping in view the well established position of law coupled with the reasons aforementioned, to the effect that the ingredients of offence punishable under Sections 506, 376 and 328 of IPC are not prima facie established as per the allegations on the face of the record, that the parties have recorded statements before learned trial Court on 20.01.2024 confirming the factum of amicable settlement by stating that they have voluntarily arrived at a compromise, in my considered opinion, not only the possibility of conviction is remote and bleak, even if the proceedings are ordered to be continued but also this is the case where continuance of the proceedings against the petitioner is likely to cause greater prejudice to the victim. In this regard, I am also fortified by observations made by High Court of Madras in Crl.O.P. No.25882 of 2019 and Criminal M.P. No.13776 of 2019 titled as *Sanjoy Bhattacharya v. State and another* decided on 01.04.2021 which it was a case of consensual sex between the parties who had settled the dispute between themselves. It was observed that continuation of criminal proceedings would put the accused to great oppression and prejudice and no purpose would be served in proceeding with the case against the petitioner. As such, it is a fit case for exercising inherent jurisdiction of this Court under Section 482 of the Code, so as to secure the ends of justice and the quashing of FIR would be for the welfare of the parties. Accordingly, FIR No.89 dated 21.09.2023 registered under Sections 506, 376 and 328 of IPC at Police Station Bhargo Camp, District Jalandhar and the consequential proceedings arising

therefrom, are ordered to be quashed and the petition stands allowed.”

6. A bare perusal of the aforesaid order would show that this Court had allowed the petition filed under the inherent jurisdiction and had quashed FIR No.89 dated 21.09.2023 registered under Sections 506, 376 and 328 IPC. A perusal of the said order would also show that although the parties had stated before the learned trial Court that a compromise had been effected between them, however, the quashing of the FIR was not granted merely on the basis of compromise. Rather, this Court had independently examined the allegations contained in the FIR as well as the legal position governing offences under Section 375 IPC and had recorded a categorical finding that even if the allegations were taken at their face value, the essential ingredients of the offences alleged against the petitioner were not prima facie made out. It was specifically observed that the relationship between the parties appeared to be consensual in nature and there was nothing on record to indicate that the promise of marriage allegedly made by the petitioner was false at the very inception so as to vitiate the consent of the prosecutrix. It was in view of such findings on merits that this Court had concluded that continuance of the criminal proceedings would amount to abuse of the process of law and accordingly exercised inherent powers to quash the FIR.

7. In the present application, the grievance raised by the applicant/respondent No.2 is that the petitioner has not complied with the alleged terms of compromise and has refused to solemnize marriage with her. However, the said plea cannot furnish a valid ground for recalling the order dated 29.02.2024. As noticed above, the quashing of the FIR was not solely predicated upon the compromise between the parties but was primarily based on the finding that no prima facie offence under Sections 506, 376 and 328 IPC was made out against the petitioner. Once such a finding had been returned and the criminal

proceedings were quashed, the subsequent conduct of the parties or the alleged breach of any understanding between them cannot revive the criminal prosecution nor confer jurisdiction upon this Court to recall the final order. It is well settled that once a criminal Court has signed its judgment or final order disposing of a case, it becomes *functus officio* and is precluded from altering or reviewing the same except for correction of clerical or arithmetical errors. This statutory embargo is embodied in Section 403 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*corresponding to Section 362 of CrPC*). The said provision clearly mandates that no Court shall alter or review its judgment after it has been signed, except to correct clerical or arithmetical mistakes.

8. The scope and effect of the aforesaid bar has recently been reiterated by the Hon'ble Supreme Court in ***Raghunath Sharma v. State of Haryana, 2025 SCC OnLine SC 1148***, wherein it has been held that once criminal proceedings have been quashed by a final order, the High Court cannot subsequently recall or revive the same by invoking its inherent powers. The Hon'ble Supreme Court categorically held that recall of such an order would amount to alteration or review of the judgment, which is impermissible in view of the statutory prohibition contained in Section 362 of CrPC and that inherent powers cannot be exercised to do something which the statute expressly prohibits. It was further clarified that subsequent disputes between the parties or alleged violation of compromise terms cannot be a ground to recall an order quashing criminal proceedings. The only limited exceptions to the aforesaid bar arise in extraordinary situations such as where the order has been obtained by fraud upon the Court, where there has been violation of principles of natural justice, or where the order is a nullity for want of jurisdiction. No such circumstance has been demonstrated in the present case.

9. Viewed from another angle, the grievance of the applicant essentially pertains to the alleged breach of an understanding between the parties

regarding marriage. Even if such allegation is assumed to be correct, the same may give rise to such remedies as may be available to the applicant in accordance with law but it cannot be a ground for recalling a final judicial order by which the criminal proceedings have already been quashed on merits. Thus, once the order dated 29.02.2024 attained finality and this Court had recorded a finding that no prima facie case was made out against the petitioner, this Court becomes *functus officio* and lacks jurisdiction to reopen or review the said order in view of the statutory bar contained in Section 403 of the BNSS. Hence, the present application seeking recall of the order dated 29.02.2024 is not maintainable and is accordingly **dismissed**.

10. Before parting, it is clarified that this Court has not examined nor expressed any opinion on the allegations made by the petitioner in his reply regarding the character or past conduct of respondent No.2. The said assertions have been noticed only for the purpose of recording the submissions advanced on behalf of the parties and nothing contained in this order shall be construed as casting any aspersion upon the character of respondent No.2.

07.03.2026

Wassem Ansari

(MANISHA BATRA)
JUDGE