

*Before Sanjeev Prakash Sharma, J.*

**BHUPENDER SINGH**— *Petitioner*

*versus*

**STATE OF HARYANA AND ANOTHER**— *Respondents*

**CRM-M-23386 of 2023**

May 16, 2023

*Indian Penal Code, 1860—S.376 (2)(n)— Code of Criminal Procedure, 1973— S.164— Compromise between prosecutrix and accused— Prosecutrix claiming allegation made in fit of anger— Case involving mental depravity not to be quashed—Petition dismissed.*

*Instances of false allegations on the rise— Keeping in view S.182 IPC Courts to initiate proceedings where complainant turns hostile or administration to initiate disciplinary proceedings for submitting frivolous charge-sheet.*

*Held*, that 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.

(Para 12)

*Further held*, that cases of FIR registered for allegations of rape cannot appropriately be quashed even though the victim or the family of the victim have settled the dispute.

(Para 13)

*Further held*, that the Courts shall direct the prosecution to initiate proceedings under Section 182 IPC where the complainant turns hostile in Court or direct the administration to initiate disciplinary action against the police authority for submitting frivolous chargesheet in Courts.

(Para 15)

J.P.Sharma, Advocate, *for the petitioner.*

Ashok Singh Chaudhary, Addl. A.G. Haryana.

Anil Kumar, Sharma, Advocate, for complainant.

**SANJEEV PRAKASH SHARMA, J**

(1) The matter comes up on the joint prayer of both the counsels

appearing for the accused-petitioner and the complainant stating that a compromise has taken place amongst them and therefore the FIR and further proceedings be quashed as against the petitioner.

(2) It is stated that the complainant and this petitioner wanted to marry but as the marriage could not take place, the complainant in fit of anger and rage lodged an FIR for offence under Section 376(2)(n) of IPC at Police station Bhondsi, District Gurugram on 08.04.2023. She also got her statement recorded under Section 164 Cr.P.C wherein she made allegations of having been raped by the petitioner.

(3) Soon thereafter within 15 days or so i.e on 24.04.2023, a compromise was arrived at between the parties after the elders intervened and the complainant stated that she had earlier made allegations in a fit of anger which she wants to withdraw. She also specifically mentioned that no rape or any other offence has been committed.

(4) Based on such compromise, the petition has been filed seeking quashing of the FIR.

(5) Learned State counsel submits that the process initiated after lodging of an FIR results in the entire police administration taking up the matter with its full vigour. There are already directions issued from time to time by this Court as well as by the Supreme Court for taking up matters relating to rape with vigilance. He, therefore, submits that as the offence alleged is of a heinous and deprevious decadent nature and as held by the Apex Court from time to time, it being an offence involving mental depravity, such FIRs ought not to be quashed by this Court even though compromise has been arrived at between the victim and the accused.

(6) On the other hand, learned counsel appearing for the petitioner states that the petitioner ought not be made to face agony of trial moreso as both the parties have decided to live separately and victim after attaining age of majority does not press charges against the petitioner. There is no chance of conviction of the petitioner as even in trial she would not support the allegations made in the FIR.

(7) I have considered the submissions.

(8) A three judges Bench of Apex Court in *Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Kumar and others versus State of*

**Gujarat and another**<sup>1</sup> was examining a matter relating to a case registered on the basis of a complaint for offences under Sections 384, 47, 468, 471, 120-B and 506(2) IPC. A settlement was arrived at between the parties, however, High Court found that the case involved extortion, forgery and conspiracy and it was not in the interest of society at large to accept the settlement and quash the FIR. Petitioner relied upon judgment passed by the Apex Court **Gian Singh versus State of Punjab**<sup>2</sup> and **Narender Singh versus State of Punjab**<sup>3</sup> to submit before the Apex Court that the FIR deserves to be quashed in view of the amicable settlement.

(9) The Apex Court having noticed a law in **Gian Singh's case** (*supra*) and **Narender Singh's case** (*supra*) and **State of Maharashtra versus Vikram Anantrai Doshi**<sup>4</sup> and **CBI versus Maninder Singh**<sup>5</sup> laid down following broad principles:-

“**16.1** 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 recognizes and preserves powers which inhere in the High Court.

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.

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

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<sup>1</sup> (2017) 9 SCC 641

<sup>2</sup> (2012) 10 SCC 303

<sup>3</sup> (2014) 6 SCC 466

<sup>4</sup> (2014) 15 SCC 29

<sup>5</sup> (2016) 1 SCC 389

power.

While the inherent power of the High Court has a wide ambit and plentitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any Court.

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.

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 be settled. 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.

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 insofar as the exercise of the inherent power to quash is concerned.

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.

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 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offenses 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 misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

(10) On the basis of the aforesaid principles, the Supreme Court upheld the order passed by the High Court declining to quash the FIR and dismissed the appeal.

(11) In another case *State of M.P versus Laxmi Naraom*<sup>6</sup> on the basis of apparent conflict between two decisions of the Apex Court in *Narender Singh's case (supra)* and *State of Rajasthan versus Shambhu*<sup>7</sup>, the matter was referred to larger Bench of three judges.

(12) After having noticed the cases, all the aspects, it held as under:-

“**15.1** 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;

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;

Similarly, such power is not to be exercised for the offences under the special statutes 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;

Offences under Section 307 IPC and the Arms Act, would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and

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<sup>6</sup> (2019) 5 SCC page 688

<sup>7</sup> (2014) 4 SCC 149

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 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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in *Narinder Singh* should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

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 impact 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.”

(13) Thus, examining the present case on the basis of (*paras 16.6 and 15.2 supra*) the aforesaid two judgments (three judges) respectively, this Court finds that in both the cases it has been observed that cases of FIR registered for allegations of rape cannot appropriately be quashed even though the victim or the family of the victim have settled the dispute.

(14) However, in a recent judgment passed by the Supreme Court in *Criminal Appeal No. 1217 of 2022, Kapil Gupta versus State of MCD decided on 10.08.2022*, the two judges Bench of the Apex Court were examining a case where the victim had been seeking employment with the accused and the accused-appellant therein committed rape on her after reaching to her house. Allegations were levelled by the accused- appellant therein against the victim by making allegations of extortion. Later on, the matter was amicably settled and an application was moved for quashing the FIR before the High Court which came to be dismissed after having been satisfied that the consent given for compromise was without any coercion or duress, the Apex Court has held as under:-

15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No.2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since the respondent No.2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

18. In that view of the matter, the appeal is allowed and proceedings in the criminal cases arising out of following

FIRs are quashed and set aside:

1. FIR No.569/2020 registered at Police Station, Mehrauli, New Delhi (Rape)
2. FIR No.824/2020, registered at Police Station, Mehrauli, New Delhi (Extortion)

(15) Thus, this Court finds that the aforesaid judgment passed in *Kapil Gupta's case (supra)* is on its own peculiar facts. In the present case, the victim has recorded a compromise within sixteen days of lodging of an FIR and she states that her allegations were in a fit of anger. At this stage, this Court has to also take notice of provisions of Section 182 IPC which reads as under:-

**“Section 182 IPC**

False information, with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Thus, it is apparent that nobody should be allowed to abuse the process of the Court. These days while the Court notices that there have been several cases coming up where completely false and frivolous allegations were made in FIR and cross FIRs. The Courts reached to conclusion that Several judgments of acquittal in cases of false allegations of rape are being passed but no proceedings under Section 182 IPC are being initiated nor any directions are issued from the Court for initiating proceedings for false prosecution and for lodging a false and frivolous FIR. There are also cases where the prosecutrix lodges an FIR under Section 376 IPC obtains compensation from Social Welfare Department and later on turns hostile in the Court but no action is taken. It is directed that henceforth the Courts shall direct the



prosecution to initiate proceedings under Section 182 IPC where the complainant turns hostile in Court or direct the administration to initiate disciplinary action against the police authority for submitting frivolous chargesheet in Courts.

(16) Such change of versions ought not be encouraged by this Court and, therefore, keeping in view the law laid down by the Apex Court in *State of M.P's case (supra)* and *Parbhatbhai Aahir's case (supra)*, the prayer made for quashing of the FIR for allegations of rape on the basis of compromise is rejected.

(17) The petition is accordingly, dismissed.

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*Dr. Payel Mehta*