

2023 SCC OnLine Del 5612

In the High Court of Delhi at New Delhi
(BEFORE RAJNISH BHATNAGAR, J.)

Yojan Sharma ... Petitioner;

Versus

State and Another ... Respondents.

CrI.M.C. 980/2023 and CrI.M.A. 3729/2023

Decided on September 6, 2023, [Reserved on : 12.05.2023]

Advocates who appeared in this case:

Mr. Bharat Bhushan, Advocate and Mr. Anil Ohlan, Advocate.

Mr. Amit Ahlawat, APP for the State with SI Annu, P.S. Sultanpuri.

The Judgment of the Court was delivered by

RAJNISH BHATNAGAR, J.:— By way of this judgment I shall dispose of the present petition filed by the petitioner under Section 482 Cr. P.C. read with Article 227 of the Constitution of India for quashing of FIR No. 486/2022 under Section 376/506 IPC and Section 6 of POCSO Act registered at Police Station Sultanpuri, Delhi and all other proceedings initiated therefrom.

2. In brief the facts of the case are that on 17.05.2022, the above said FIR got registered on the complaint of respondent no. 2 against the petitioner wherein it is alleged that petitioner finding the prosecutrix alone at his home on the ground floor (hall), the petitioner pulled the prosecutrix by her hand and smashed her on the sofa and develop physical relations with her and was also threatened by him. It is further alleged that the respondent no. 2 did not tell the anything due to fear. Thereafter, similarly, the petitioner again called the respondent no. 2 at his home and grabbed her from back and developed physical relations with her. Thereafter, it was found that the respondent no. 2 was suffering from vomiting since 5 days, so the mother of the respondent no. 2 took her to Sanjay Gandhi Hospital, where the doctor confirmed that the respondent no. 2 was pregnant. Accordingly, the investigation was taken up and the petitioner was arrested in the present FIR on 27.06.2022.

3. I have heard learned counsel for the petitioner, learned APP for the state and have perused the records of the case.

4. It is submitted by the learned counsel for the petitioner that the present FIR has been registered due to misunderstanding between the family members of petitioner and respondent no. 2. It is further submitted by him that on 05.11.2022 the petitioner was granted

interim bail by the learned Trial Court on the ground that the petitioner and the respondent no. 2 expressed their desire to get married to each other and subsequently the petitioner and the respondent no. 2 got married to each other on 10.11.2022, the photograph of marriage has been annexed with the present petition as "ANNEXURE-C". It is further submitted by him that the marriage between the petitioner and the respondent no. 2 has been solemnized out of their own free will and without any force, fraud, coercion and pressure. It is further submitted that the respondent no. 2 and her mother do not wish to pursue the case against her own husband and son-in-law respectively. It is further submitted by the learned counsel for the petitioner that the respondent no. 2 has given her affidavit cum-No-Objection in this regard annexed along with the present petition as "ANNEXURE F & G" and both petitioner and respondent no. 2 are living peacefully and enjoying their matrimonial life and there is no dispute or grievance between them against each other.

5. On the other hand, it is submitted by the learned APP while opposing the present petition that this is not a fit case to invoke the inherent jurisdiction of this Court to exercise its power on the basis of compromise arrived at between the parties with respect to an offence not compoundable under Section 320 Cr. P.C.

6. The instant case is a case where two societal interests are in clash. To punish the offender for a crime, involved in present case, is in the interest of society, but, at the same time, respondent no. 2-victim has solemnized marriage with petitioner and are living happily and harmoniously and it is also in the interest of society to settle and re-settle the family for their welfare.

7. The Hon'ble Supreme Court in *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, while explaining that High Court has inherent power under Section 482 of the Code of Criminal Procedure with no statutory limitation, including Section 320 Cr. P.C., has held that these powers are to be exercised to secure the ends of justice or to prevent abuse of process of any Court and these powers can be exercised to quash criminal proceedings or complaint or FIR inappropriate cases where offender and victim have settled their dispute and for that purpose no definite category of offence can be prescribed. However, it is also observed that Courts must have due regard to nature and gravity of the crime and criminal proceedings in heinous and serious offences or offence like murder, rape and dacoity etc. should not be quashed despite victim or victim family have settled the dispute with offender. It was also held that no category or cases for this purpose could be prescribed and each case has to be dealt with on its own merit but it is also clarified that this power does not extend to crimes against society.

8. Further, the Apex Court in *Parbatbhai Aahir alias Parbhathbhai Bhim singh bhai Karmur v. State of Gujarat*, (2017) 9 SCC 641, has observed that the High Court, as per Section 482 Cr. P.C., acknowledges the existence of inherent powers that are not restricted by the provisions outlined in Section 320 Cr. P.C. This means that the High Court has the authority to exercise its inherent powers independently of the limitations set forth in Section 320 Cr. P.C.

9. Furthermore, the Hon'ble Supreme Court in case *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 and also in *State of Madhya Pradesh v. Laxmi Narayan*, (2019) 5 SCC 688, has outlined principles to guide the High Court in handling settlements between parties and utilizing its authority under Section 482 of the Code. These principles aid in making fair decisions when accepting the settlement and dismissing the case or declining the settlement and instructing the continuation of criminal proceedings.

10. Reliance can be placed upon *Madan Mohan Abbot v. State of Punjab*, (2008) 4 SCC 582, wherein the Hon'ble Supreme Court, in its guidance, highlighted the importance of adopting a practical approach in criminal proceedings when considering compromises. Taking into account the nature of the case and aiming to optimize the Court's time for addressing more impactful and meaningful litigation, a common-sense approach that considers practical aspects rather than legal technicalities should be employed.

11. No doubt Section 376 IPC and Section 6 of the POCSO Act are not compoundable under Section 320 Cr. P.C., however, as explained by Hon'ble Supreme Court in *Gian Singh's, Narinder Singh's, Parbatbhai Aahir's and Laxmi Narayan's cases* (supra), the authority of the High Court under Section 482 Cr. P.C. remains unrestricted by the provisions of Section 320 Cr. P.C. It can use its inherent powers under Section 482 Cr. P.C. to quash FIRs. and criminal proceedings if deemed necessary based on the specific facts and circumstances of the case, either to serve the interests of justice or to prevent the misuse of the court process. This power can even be exercised in cases where the offenses are non-compoundable, but the parties have reached a settlement among themselves.

12. The Hon'ble Supreme Court in *Kapil Gupta v. State of NCT of Delhi*, 2022 SCC OnLine SC 1030, had observed, while quashing an FIR under Section 376 of IPC, that:

"13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the

offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

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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."

13. In the present case, parties have arrived at a settlement and have married each other on 10.11.2022 as stated by the learned counsel for the petitioner. Attention of this Court has been drawn to the Affidavit-cum-No-objection given by respondent no. 2 where she has stated that she has no objection in case the FIR is quashed. One cannot lose sight of the fact that both the petitioner and the respondent no. 2 are happily residing together in matrimonial home and considering restarting their lives with a new beginning. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years. The mistake or blunder which otherwise constitutes an offence has been committed due to immature act and uncontrolled emotions of two persons, out of whom, one was a minor at the time of incident as claimed by the state.

14. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice and would bring joy to both the families as well.

15. Therefore, looking into the peculiar facts and circumstances of the case, I am of the opinion that present petition deserves to be allowed for ends of justice. Accordingly the petition is allowed and FIR No. 486/2022 under Section 376/506 IPC and Section 6 of POCSO Act

registered at Police Station Sultanpuri, Delhi and all other proceedings initiated therefrom are hereby quashed.

16. Petition stands disposed of in above terms, so also pending application, if any.

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