

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: October 20, 2009

Pronounced on: November 05, 2009

+ **(1) CRL.M.C. No. 3447/2009**

Narayani Gautam & Ors. Appellant

! Through: Mr. Vijay Aggarwal and Mr.
T.S. Atwal, Advocates

Versus

\$ State Respondent

^ Through: Mr.Amit Sharma, Addl.P.P.
for the State

+ **(2) CRL.M.C. No. 3712/2009 & Crl.M.A.12619/09**

Reserved on: October 30, 2009

Pronounced on: November 05, 2009

Guddu & Ors. Appellant

! Through: Mr. Brahman Singh,
Advocate

Versus

\$ State & Ors. Respondent

^ Through: Mr.R.N. Vats, Addl.P.P. for
the State with Insp. Sukhdev Meena
From P.S. Dwarka

+ **(3)W.P.(CrI.) No. 858/2009**

Reserved on: November 03, 2009

Pronounced on: November 05, 2009

Than Singh & Anr. Appellant

! Through: Mr. Sanjeev Narula, Advocate

Versus

\$ State N.C.T. of Delhi & Anr. Respondent

^ Through: Mr.Piyush Singh for
Mr. Vikas Pahwa, Addl.
Standing Counsel for CBI.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

V.K.Jain, J.

These are two petitions u/s 482 of the Code of Criminal Procedure and the one under Article 226 of the Constitution read with Section 482 of Cr.P.C., for quashing the FIR and the proceedings arising therefrom. The petitioner in Criminal Misc. Case No.3447/2009 has sought quashing of

FIR No.118/2009 registered at P.S. Narela u/s 376/506 of IPC, whereas the petitioner in Criminal Misc. Case No.3712/2009 has sought quashing of the proceedings arising from FIR No.826/2007 which was initially registered u/s 304-B/498-A of IPC and in which the petitioners were discharged of the offence u/s 304-B of IPC. In WP (Crl.) 858/09, the petitioner has sought quashing of FIR registered u/s 323/186/353/332/34 of IPC and consequential proceedings.

2. In Crl.M.C. No.3447/2009, the prosecutrix who is a married woman, alleged that on 25th April, 2009, she fell sick and informed her husband on telephone who, then sent the petitioner Rajender to her house, for taking her to hospital. The prosecutrix was in semi-conscious state, when the petitioner came to her house. Taking advantage of her condition, the petitioner raped her and then fled from the house before arrival of her maid servant. It has been stated in the petition that since the parties belong to the same family, they have resolved all their disputes and differences.

3. In Criminal Case No.3712/2009, one Mehrunissa, who was married to petitioner No.1, Guddu died on 20th August, 2007. The cause of her death was opined to be broncho pneumonia, which resulted in respiratory failure and death. It was alleged in the FIR lodged by the father of the deceased that since the time of marriage, the husband, mother and sister of the deceased used to harass her for dowry. In between he also gave financial assistance to them to the extent it was possible for him. He further stated that about 8-10 days ago, the petitioner asked his daughter to demand Rs.80,000/- from him, over telephone, for construction of a house. The complainant was unable to pay that amount. Thereupon at about 7.30 p.m. on 20th August, 2007, petitioner Guddu called them from a STD Booth and threatened to marry again, in case Rs.80,000/- were not paid to him. The learned Additional Sessions Judge vide her order dated 4th July, 2008 held that since cause of her death was found to be broncho-pneumonia, no case u/s 304-B of IPC was made out. The matter was sent back for trial by a Magistrate for the offence punishable u/s 498-A of IPC.

4. In WP(Crl.) 858/09, the allegation against the petitioner, who is working in Delhi Police, is that when the officials of Delhi Jal Board, disconnected his unauthorized water connection, he came there in uniform, abused a Junior Engineer who had disconnected the supply and gave him beating.

5. Quashing of FIR and criminal proceedings pursuant to a compromise have been subject matter of a judicial pronouncement from time to time and the learned counsel for the petitioner in Crl.M.C. No.3447/2009 also has referred to a number of decisions of the Hon'ble Supreme Court and this court in which criminal proceedings were quashed in exercise of power u/s 482 of the Code of Criminal Procedure.

6. In *Mahesh Chand and Another versus State of Rajasthan*, 1990 (Supp) SCC 681, the accused was acquitted by the trial court but convicted by the High Court for the offence under Section 307 IPC. One of the accused was a lawyer practising in the lower court and there was a counter case arising out of the same transaction. That case had also been compromised. Permission was sought to compound the

offence under Section 307 of IPC. After examining the nature of the case and the circumstances under which the offence was committed, the Hon'ble Court directed the trial court to permit the parties to compound the offence.

7. In *Central Bureau of Investigation, Vs. Duncans Agro Industries Ltd.*, (1996) 5 SCC 591, the FIR was registered by CBI Under Section 120B of IPC read with Sections 409, 420, 467 and 471 thereof, in respect of credit facilities extended by United Bank of India to a division of the Duncans Agro Industries Ltd. The second FIR was registered under Section 120B, read with Section 420 of IPC. The criminal proceedings were quashed by the High Court on a petition filed by Duncans Agro Industries Ltd. It was noted by the Hon'ble Supreme Court that the advances had already paid before civil courts in suits for recovery of their dues and those suits had been compromised on receipt of payments from the Companies. The Hon'ble Court observed that even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the

Banks, for all intents and purposes, amounts to compounding of the offence of cheating. It was also noted that investigations had not been completed till 1991 though the complaint was filed in 1987. In these circumstances, the Hon'ble Court felt that it would not be expedient to proceed further with the complaint and, dismissed the appeal, thereby maintaining the order of the High Court.

8. In *Pepsi Foods Ltd. and Anr. VS. Special Judicial Magistrate and Ors.*, (1998) 5 SCC 549, the Hon'ble Supreme Court observed that power of the Court under Section 482 of the Code had no limit and were not inflexible though exercise of such powers would depend upon the facts and circumstances of each case, the sole purpose is being to prevent the abuse purpose of the Court or otherwise to secure the ends of justice.

9. In *B.S. Joshi & Ors v State of Haryana and Anr* (2003) 4 SCC 675, the Hon'ble Supreme Court, after reviewing case law on the subject quashed the criminal proceedings pursuant to settlement of disputes between husband and wife and on a joint prayer made by them. The Hon'ble

Supreme Court held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to the exercise of power of quashing it. It was noted that there would be almost no chance of conviction when the complainant was not likely to support the prosecution either because she had resolved disputes with her husband and other family members and as a result thereof, she had again started living with him or had parted company with him or was living happily on her own or had married someone else on earlier marriage having been dissolved by divorce with mutual consent of the parties. The Hon'ble Court was of the view that where in the opinion of the court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. It was observed that in such matrimonial matters, it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

10. In *Jagdish Channana and Ors v. State of Haryana*, AIR 2008 SC 1968, an FIR was registered in Sonapat under Sections 419, 420, 465, 468, 469, 471, 472 and 474 read with Section 34 of IPC. During pendency of these proceedings the parties entered into a compromise and one of the terms of the compromise was that the proceedings pending in the court would be withdrawn, compromised or quashed, as the case may be. The Hon'ble Supreme Court noticing that in the light of the compromise, it was unlikely that the prosecution will succeed in the matter and also noticing that the dispute was purely personal one and no public policy was involved in the transactions that had been entered into between the parties, held that continuing with the proceedings would be a futile exercise and quashed the FIR and all consequent proceedings.

11. In *Madan Mohan Abbot Vs. State of Punjab*, (2008) 4 SCC 582; an FIR was registered under Sections 379/406/409/418/34 of IPC in Police Station Kotwali of Amritsar. The parties entered into compromise under which the complainant party undertook to cooperate with the

accused to get the FIR cancelled / quashed. On the basis of compromise, an application was filed in the High Court for quashing the proceedings. The High Court having dismissed the application, the matter came up before the Hon'ble Supreme Court. Noticing that the dispute was purely personal one between two contesting parties and had arisen on extensive business dealings between them and there was absolutely no public policy involved, in the nature of the allegations made against the accused, the Hon'ble Supreme Court was of the opinion that no purpose would be served in continuing with the proceedings. The Hon'ble Court observed that it is advisable that in disputes where the question involved is purely personal in nature, the court should ordinarily accept the terms of compromise even in criminal proceedings as keeping the matter alive, with no possibility of a result in favour of the prosecution is a luxury, which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. The Hon'ble Court held that this is public opinion and common sense approach

to the matter based on ground of realities and bereft of the technicalities of the law.

12. In *Nikhil Merchant V. Central Bureau of Investigation and Anr*, (2008) 9 SCC 677, CBI filed a charge sheet against 5 accused persons under Section 120-B r/w section 420, 467, 468 and 471 of IPC r/w 5(2) and 5(1) (b) of Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1) (b) of Prevention of Corruption Act, 1988. This was a case about grant of financial assistance by a bank to a company which defaulted in repayment of the loan. The allegations in the charge sheet included that the accused conspired with each other for fraudulently diverting funds of the bank. Offences alleging forgery were also included in the charge sheet. A civil suit was also filed by the bank against the company which resulted into compromise. Consequent upon the compromise which provided that neither party had any claim against the other and the parties were withdrawing all allegations and counter allegations made against each other, the appellant, who was a Director of the Company, filed an application for his discharge from

criminal complaint in respect of which charge sheet had been filed by CBI. The application was rejected by the Trial Court as well as by High Court. The prayer for quashing the criminal proceedings was opposed by learned Solicitor General, who appeared for CBI and pointed out that the case also involved commission of forgery. It was also submitted by him that as pointed out by the Constitutional Bench in *Supreme Court Bar Association Vs. Union of India & Anr*, (1998) 4 SCC 409, in exercise of its plenary powers under section 142 of Cr. P.C., the Supreme Court should not ignore any substantive statutory provisions dealing with the subject. While observing that technically there was force in the statement made by Addl. Solicitor General, the Hon'ble Court felt that facts of the case warranted interference as dispute had overtones of a civil dispute with certain criminal facets and was a fit case where continuance of the criminal proceedings after the compromise would be a futile exercise. In that case clause 11 of the Consent Terms read as under:

“Clause 11. Agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and

counter allegations made against each other.”

Thus, withdrawal of all accusations was the hallmark of the compromise in that case.

13. In a recent decision *Central Bureau of Investigation vs. A Ravishankar Prasad & Ors*, (2009) 6 SCC 351, CBI challenged an order passed by the High Court of Madras quashing criminal proceedings initiated by it under Section 120B with Section 420 of IPC and Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988. The case involved respondents entering onto a conspiracy with Chairman and Managing Director and other officials of Indian Bank with the object to cheat bank in the matter of obtaining credit facilities. The respondents cleared entire dues, by paying an amount of Rs. 1.57 crore to the bank and filed an application under section 482 of Cr. P.C. pursuant to which proceedings against the respondents were quashed by the High Court. The Hon’ble Supreme Court noted that charge sheet incorporated complicity of some public servants and private servants to defraud the bank. The Hon’ble Court also noted that the respondents and other

bank officials shared charge sheet under Section 120B read with Section 420 of IPC and was of the view that quashing charges against them would also have serious repercussions on the pending cases against other bank officials. The appeal filed by CBI was, therefore, allowed and the order passed by the High Court was set aside. During the course of judgment, the Hon'ble Court was of the view that exercise of inherent power would entirely depend on the facts and circumstances of each case, the object of incorporating such power in the Code being abuse of process of the court or to secure ends of justice.

14. In *Smt. Rumi Dhar Vs. State of West Bengal & Anr.* , JT 2009 (5) SC 321, an FIR was registered by CBI u/s 120-B/420/467/468/471 of IPC. The bank officers were also prosecuted under Prevention of Corruption Act. There was a settlement of the appellants with the banks. An application u/s 239 of Cr.P.C. was filed for dropping the criminal proceedings. The prayer was rejected by holding that the offence being against the society and investigation having been made by CBI, settlement could not have been entered

into. Rejecting the Appeal, and after considering Duncans Agro and Nikhil Merchant, the Hon'ble Supreme Court held that exercise of power of quashing would depend upon the facts and circumstances of each case.

15. In *Manoj Sharma vs. State & Ors.*, CrI.M.A. 1619/2008 decided on 16.10.2008, an FIR got registered under Sections 420/468/471/34/121 of IPC pertaining to a dispute of private nature, was quashed pursuant to a compromise between the parties. During the course of the judgment written by him, the Hon'ble Mr.Justice Markandey Katju observed as under:-

“There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. or in writ jurisdiction on the basis of compromise. However, in some other cases, (like those akin to a civil nature) the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger

bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot.

I am expressing this opinion because Sh. B.B. Singh, learned counsel for the respondent has rightly expressed his concern that the decision in B.S. Joshi's case (supra) should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual."

16. In *Satnam Kaur and Ors. versus State*, 135(2006) DLT 84, the complainant alleged that on 2.11.2004, her parents-in law caught hold of her, her brother in law held her breast and her husband started beating her and saying that she had not brought anything in her dowry. It appears that there was also allegation of rape in that case. During the course of trial, a joint petition was filed by the parties stating

therein that they had agreed to dissolve their marriage by mutual consent and had amicably settled all their matrimonial disputes. It was further stated that FIR in question was lodged due to some misunderstanding. After noticing the decision of the Hon'ble Supreme Court in the case of *B.S.Joshi & Ors. Vs. State of Haryana & Anr.* (Supra), a learned Single Judge of this Court felt that since the charges levelled by the complainant would tantamount to outraging the modesty of the prosecutrix, supported by MLC and report of the Forensic Science Laboratory, the Court cannot give its permission in a case like this.

17. In *Sushil Suri vs. CBI & Anr.*, CrI.M.C. 3842/2008, decided on 4.9.2009, this court declined to quash an FIR registered by CBI under Sections 120B/409/420/468/471 of IPC, despite a settlement between the petitioner and respondent No.2

18. In CrI.M.C. 1304/2004, 6389/2006 and 6600-04/2006, all decided by a common order dated 23rd May, 2008 this court declined to quash the FIRs alleging forgery and use of forged documents despite compromise between private

parties noticing the report of FSL which indicated forgery of documents.

19. In CrI.M.C. 3030/2009, decided on 10.9.2009, the FIR was registered under Section 313/313/376/34 of IPC. The proceedings were quashed after noticing that the complainant was happily living with her husband and did not want to proceed with. The mother of the complainant had also given approval to her marriage with petitioner No.1. Considering the peculiar facts and circumstances of the case, the FIR was quashed.

20. In Cr.M.C.3627/2009, an FIR registered under Section 420/467/468/471/120B/34 of IPC, due to some misunderstanding between the parties, who were three real sisters was quashed pursuant to a compromise between them.

21. In *Ajay Kumar and Others vs. State and Others*, 131(2006) DLT 130, an FIR registered under Sections 420/468/471/120-B, IPC was quashed pursuant to a settlement between the parties. The dispute involved a

private Limited Company and was found to be commercial in nature involving no public prosecution.

22. In *B.K.Sondhi vs.State*, 2001(1) JCC Delhi 73, an FIR registered under Sections 420/468/471 of IPC and was quashed on the basis of compromise between the parties. In that case, the Court also took the view that even prima facie no offence had been made out. The dispute in that case involved a private farm house situated in village Satbari.

23. In *Chain Sukh & Ors. vs. State & Ors.*, 1999(1)JCC Delhi 142, an FIR under Sections 452/323/506/34 of IPC was quashed noticing the facts and circumstances of the case which involved the complainant, his wife and his brother.

24. In *Yog Raj Arora versus State & Ors.*, 2002(2)JCC 1103, an FIR under Sections 420/467/471 IPC pertaining to dispute on some agricultural land, was quashed pursuant to a compromise between the parties.

25. In *Govind and Others vs. The State*, 2003 II AD (Cr) DHC 537, an FIR under Sections 498/496/34 IPC was

quashed relying upon the decision of the Hon'ble Supreme Court in the case of B.S.Joshi and Ors. (Supra).

26. In *D.C.Singham versus State & Anr.*, 133(2006)DLT 372, an FIR under Section 406/420 of IPC was quashed pursuant to an amicable settlement of dispute between the parties.

27. In *Gudayan Dravid & Anr. Vs. State & Anr.*, Crl.M.C.227/2005, decided on 30.11.2006, a learned Single Judge of this Court quashed the FIR under Section 406/120-B IPC pursuant to a compromise between the petitioners and the I.C.I.C.I. Bank Ltd.

28. In *Mideast India Ltd. & Ors. vs. State*, Crl.M.C. No.8661-64/2006 decided on 10.1.2007, the FIR under Sections 420/406/409/120 of IPC was quashed pursuant to a settlement between the petitioners and respondent No.2.

29. In *Daulat Zia vs. Govt. of N.C.T. of Delhi*, 74(1998)DLT259, the parties who were Afghan Nationals settled their differences and did not want to pursue the

complaint. The proceedings arising out of the FIR registered under Section 307 IPC were therefore, quashed.

30. In *Rachna Gera & Ors. vs. State & Ors.*, 122(2005)DLT 412, an FIR lodged under Section 406/420/468/471/34 of IPC was quashed pursuant to compromise between the parties noticing that there was no allegation of criminal intent at the inception of the transaction and the dispute appeared to be of a private nature.

31. In *Anil Kumar Vs.State*, CrI.M.C. 6558-60/2006, an FIR under Sections 323/341/354/356/452 IPC and Sections 3(X) Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act was quashed pursuant to a compromise between the parties, who were neighbours.

32. In *Neelu Gupta & Ors. vs. State* 2007(3)JCC 1938, an FIR registered under Section 120B/420/467/471 of IPC was quashed pursuant to a compromise between the parties. The FIR was registered pursuant to a dispute between the private parties.

33. In *Ansal Buildwel Limited vs. State*, CrI.M.C. No.3517/2007 decided on 21.1.2008, an FIR registered under Section 420/468/471/120B of IPC which was quashed pursuant to a compromise between the parties.

34. In CrI.M.C. 2193/2007, an FIR got registered by respondent No.2 against the petitioner, who was her husband ,under Sections 420/468/471 and Section 12 of P.P.Act was quashed pursuant to compromise between the parties.

35. In *Religare Securities Ltd. & Others vs. State*, 2008[2] JCC 824, an FIR under Sections 420/406/468/471/120B IPC was quashed pursuant to a compromise between respondent No.2 and the petitioners.

36. In *Manoj vs. NCT of Delhi and Anr.*, W.P.(CrI.) 97/2008, an FIR registered under Sections 363/376/506 of IPC was quashed pursuant to a settlement between the parties.

37. In *Ramesh Vs. State* (I) (2007) CCR 116, the police, after investigation, submitted a final report treating the case by accidental fire. On a protest petition filed by the

complainant, cognizance was taken for the offence under Section 304-A of IPC. The parties thereafter entered into a compromise. The criminal proceedings were thereupon quashed.

38. In *Maninder Singh vs. CBI*, CrI.M.C. 2083/2006, decided on 10.2.1009, a learned Single Judge of this Court quashed proceedings arising out of FIR registered by CBI under Sections 420, 467, 468, 471 read with 120B IPC.

39. In *Surender @ Rahul vs. State*, Bail Appln. 883/2009, decided on 29.5.2009, a learned Single Judge of this Court quashed an FIR registered under Sections 363/366/376 of IPC pursuant to an amicable settlement between the parties. In that case, father of the prosecutrix who was heard in Chamber stated that he wanted to arrange wedding of his daughter and, therefore, wanted an amicable resolution keeping the future of his daughter in mind. The matter was then referred for mediation where settlement was effected. The FIR was thereafter quashed.

40. In *Punjesh Jindal vs. State & Ors.* 2009 in W.P.(Crl.) 727/2008, a learned Single Judge of this Court quashed an FIR registered under Section 120B/408/420/467/468/471/477A of IPC pursuant to a compromise between the parties, relying upon decision of Supreme Court in *Nikhil Merchant* (Supra).

41. In *Harish Budhiraja And Others versus State*, Crl.M.C. 1742/2009, decided on 27.8.2009, a learned Single Judge of this Court quashed an FIR registered under Section 384/342/354/506/34 IPC, pursuant to a compromise between petitioner No.1 and the complainant/petitioner No.2. A perusal of the order would show that due to some misunderstanding between the petitioners, the FIR was got registered by petitioner No.2 against petitioner No.1. Keeping in view the facts of the case including the age of the complainant, the proceedings were quashed.

42. In WP (Crl.) No.1236/2009 decided on 18th September, 2009, a learned Single Judge of this court quashed an FIR registered u/s 376/420/493/494/406 IPC pursuant to a settlement between the complainant/petitioner No.2 and

petitioner No.1. A perusal of the order would show that in that case petitioner No.1 and 2 had got married. Subsequently, petitioner No.2/complainant learnt that petitioner No.1 already had a family in India, which resulted in filing of FIR by her.

43. The proposition of law which emerges from these cases is that (i) the embargo placed by Section 320 of the Code of Criminal Procedure against compounding of certain offences does not come in the way of the court quashing an FIR or a criminal complaint and the proceedings arising therefrom, in exercise of its inherent powers u/s 482 of the Code of Criminal Procedure. Vesting of such a power in the High Court cannot be denied in view of use of the expression “nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court,” the only other requirement being that the power should be exercised to give effect to any order made under the Code of Criminal Procedure or to prevent abuse of the process of a court or otherwise to secure the ends of justice; (ii) an FIR or a criminal complaint and the proceedings arising therefrom

can be quashed on the basis of a compromise if, taking into consideration the nature of the offence alleged to have been committed, the circumstances in which the offence was committed and the overall facts of the case, the court is of the view that quashing of the criminal proceedings would meet the ends of justice or is otherwise necessary to prevent an abuse of the process of the court.

44. Coming to cases of rape, the Hon'ble Supreme Court in *State Vs. Gurmeet Singh*, AIR 1997 SC 1588, after noticing that the crime against women in general and rape in particular is on the increase, reminded that a rapist not only violates the victim's privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process. A murderer destroys the physical body of his victim, whereas a rapist degrades the very soul of the helpless female thereby destroying whole of her personality.

45. In *Bodhi Sattwa Gautam Vs. Subhra Chakraborty*, AIR 1996 SC 922, the Hon'ble Supreme Court observed, *inter alia*, as under:-

“Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not play things for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a

crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."

46. Sexual offences constitute an altogether different class of crime which is the result of a perverse mind. By their very nature these crimes cannot be treated at par with economic crimes or the crimes such as causing grievous hurt or even attempt to commit murder. Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right of privacy and sanctity of a female and is a serious blow to her supreme honor offending her self-esteem and dignity.

47. Recognizing the imperative need to deal such offences with a severe hand, Parliament amended the law extensively by Criminal Law (Amendment) Act, 1983 so as to provide minimum sentence of rigorous imprisonment of seven years with enhanced minimum punishment for offences of a graver

nature such as custodial rape and gang rape. A deeming provision was also added by way of explanation (1) to Section 376 IPC to hold all the persons acting in furtherance of a common intention liable for rape even if the rape is committed only by one or more amongst them. It is the bounden duty of the court to respect the legislative mandate as reflected in amendment of Section 376 of Indian Penal Code.

48. Allowing quashing of FIR and/or charge-sheet, pursuant to a compromise, will, in such cases, only embolden the perpetrators of such crimes, which otherwise are on the increase, in our society. If the accused in such a case is an affluent person and the prosecutrix comes from a socially or economically weaker strata of the society, quashing in such a case would only encourage commission of such offences, as the accused, using his money power or otherwise, may be able to induce the prosecutrix to enter in to settlement with him and then seek quashing of criminal proceedings, on the strength of that settlement.

49. In my view, a petitioner is not entitled to quashing merely because in the facts and circumstances of some other case, this court has quashed an FIR registered u/s 376 of Indian Penal Code. Every case has to be decided on its own facts and no hard and fast rule can be laid down as regards the cases, which deserve quashing by the High Court in exercise of power u/s 482 of the Code of Criminal Procedure or Article 226/227 of the Constitution. This was recognized by the Hon'ble Supreme Court in the case of *Ravi Shankar Parshad (Supra)*. If, considering the special facts of a case, the court decides to quash the FIR registered or the complaint filed in a particular case, that *ipso facto* does not justify quashing of the FIR/complaint in every other case involving the commission of an offence punishable under the same provision of law or with equal or even lesser punishment. The nature of the offence than in fact be more important than the punishment prescribed for it. The court has to apply its mind to the facts and circumstances of each case that comes up before it for quashing, note the special features, if any, justifying quashing of the prosecution and then come to an appropriate conclusion.

50. It was contended by the learned counsel in Crl.M.C. 3447/2009 that in case this court is of the opinion that an FIR registered u/s 376 of Indian Penal Code ought not to be quashed, the matter may be referred to a larger Bench as some co-ordinate Benches have already quashed FIRs registered u/s 376 of Indian Penal Code. I am unable to agree with the learned counsel. No doubt, if a Judge differs with a co-ordinate Bench on a question of law, judicial discipline requires that he should refer the cases for consideration of that proposition, of law by a larger Bench. I, however, do not find any particular proposition of law having been laid down in any of the cases referred by the learned counsel for the petitioner. There is no denial that in appropriate cases the High Court has the power to quash an FIR or a criminal complaint even if the offence is otherwise not compoundable. But, this proposition of law has to be applied taking into consideration the facts and circumstances of each individual case. Therefore, there is no ground for referring the matter to a larger Bench.

51. Now, I come to prayer in Crl.Misc. Case 3712/09 for quashing prosecution u/s 498-A IPC. The object behind addition of Section 498-A to Indian Penal Code by Criminal Law (2nd Amendment) Act, 1983 was to prevent the torture of a woman by her husband or relatives of the husband. The increase in cases of harassment and deaths of young married women, as a result of unlawful demands of dowry by their husbands or parents-in-law, had led to enactment of Dowry Prohibition Act, 1961. Since the provisions of Dowry Prohibition Act were not found to be adequate to curb the evil, the Parliament in its anxiety to extend protection to the weaker spouse, added Chapter XX-A, which includes Section 498-A, to Indian Penal Code. Traditionally, the women in our society has, at least in the past, been subjugated to the whims and caprices of the husband and sometimes also her in-laws. Sometimes, on account of the harassment caused and the cruelties inflicted on her, her life becomes so miserable and intolerable that she decides to put an end to such a life by committing suicide. The statement of objects and reasons behind enactment of Act 46 of 1983, *inter alia*, stated as under:-

“The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws.”

52. If the wife, who has been subjected to cruelty or harassment enters into a settlement with her husband and/or in laws either by deciding to give the marriage another try and consequently continue living with the husband or by obtaining divorce by mutual consent and decides to embark upon a new Chapter in her life, bereft of her past relationship, the courts do recognize the need for bringing an end to the criminal proceedings initiated in such a case by quashing the same in terms of the settlement between the parties. The purpose is to enable the parties to live peacefully, in future, without retaining any feeling of rancour or ill-will towards each other.

But, when the wife has died, these considerations do not exist any more and in such a situation, no useful purpose is served by quashing the criminal proceedings that were initiated against the husband and/or in-laws of the deceased. In fact, the parents or other family members of a deceased spouse are nobody to enter into a compromise in respect of the offence which was committed against the deceased and not against them. It is the deceased and not her family members, who had to undergo the torture, cruelty and harassment at the hands of her husband and/or in-laws. It would, therefore, neither be in consonance with public policy nor in the benefit of the society at large to allow the family members of a deceased woman to enter into a compromise with her husband and/or in-laws and then come to the court seeking quashing of the criminal proceedings pursuant to such a compromise. In fact, quashing criminal proceedings in such cases, after death of victim of the crime may in some cases, encourage the accused persons to win over the family members of the deceased for considerations which may not necessarily be brought on record. To put it rather bluntly, this may encourage the accused of such

offences to offer lucrative amounts in the form of compensation or otherwise to the family members of the deceased, particularly if they happen to come from rather poor strata of the society. Having already lost their daughter/sister, they may not always find any incentive to continue the criminal proceedings, if they are compensated in monetary terms or are otherwise persuaded to enter in to a settlement. Therefore, in my view, it would be contrary to public interest if the criminal proceedings are quashed pursuant to a compromise between the accused persons on one hand and family members of the deceased on the other hand.

53. As regards offences u/s 186/332/353 of Indian Penal Code, it would be noticed that Section 186 is comprised in Chapter X of the Penal Code which deals with Contempts of Lawful Authority of Public Servants and the offences u/s 332 and 353 of the Penal Code are also the offences committed against public servants with intent to prevent them from discharging their official duties or on account of something done or attempt to be done by them in lawful discharge of

their duties as a public servant. The main purpose behind these sections is to give adequate protection to the public servants in discharge of their official duties and to maintain the lawful authority of the public office held by them. It has to be kept in mind that these offences are not committed on account of some private act done by the victim public servants. These public servants become victim of the crime only on account of their discharging the duties of the public office held by them. They are not engaged in any personal work and have done nothing with a personal purpose so as to invite the wrath of accused persons. Therefore, such offences cannot be treated at par with other offences against human body, such as offences u/s 325, 326, 308 or even 307 of Indian Penal Code. If those who commit such offences are allowed to go scot free by entering into a compromise with the public officials assaulted or obstructed by them, that would discourage other public servants from discharging their official duties without any fear or pressure. In fact the very sanctity behind an orderly governance and maintenance of rule of law will be seriously compromised, if such offenders are allowed to go scot free without having to

face trial for the offences alleged to have been committed by them.

54. In *Kulvinder Singh Vs. State of Punjab & Anr.*, 2007 (4) CTC 769, a Five Judges Bench of Punjab & Haryana High Court examined the scope of the power of the High Court u/s 482 of the Code of Criminal Procedure to quash the proceedings in non-compoundable offences. Sh. R.S. Cheema, Sr. Advocate, who assisted the Bench as Amicus Curiae, placed certain guidelines before the High Court for consideration. These guidelines, *inter alia*, recommended as under:-

“The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and

air force) must remain non-compoundable.”

In view of the discussion made in preceding paragraphs, I am of considered view that in none of these three cases, the FIR or the criminal proceedings arising therefrom ought to be quashed. All the three petitions are, therefore, dismissed.

(V.K. JAIN)
JUDGE

November 05, 2009/aks/sn/sk