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

Reserved on : 15.07.2014

Pronounced on : 22.07.2014

+ CRL.M.C. 2561/2014 and CrI.M.A. No.8615/2014

SATBIR & ORS

..... Petitioners

Through: Mr.Rajeev Kr. Singh, Advocate.

versus

STATE

..... Respondent

Through: Ms.Ritu Gauba, APP with SI R
Ravinder, P.S. Alipur, Delhi.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

1. The Petitioners have invoked the jurisdiction of this Court with the prayer to quash the FIR No.442/2014 under Sections 323/341/354/34 IPC registered on 09.05.2014 at P.S. Alipur, Delhi on the basis of statement made by 'J' aged about 18 years (name withheld to conceal the identity) who is also resident of the same village. The quashing of FIR has been sought on the following grounds:-

- (i) That all the Sections invoked against the Petitioners/accused are compoundable in nature, as Section 323 and 341 IPC are compoundable under Section 320 (1) Cr.P.C. whereas Section 354 IPC is compoundable under Section 320(2) Cr.P.C.

- (ii) Since all the offences are compoundable in nature, in view of the compromise entered into between the parties, the proceedings can be quashed.
- (iii) The invocation of Section 354 IPC is bad in law, as no such offence was committed by the Petitioners.
- (iv) There is delay of about four hours in registration of the FIR.
- (v) That the Petitioners No.1 & 2 are farmers whereas Petitioners No.3 & 4 are juvenile.

2. Learned counsel for the Petitioners submitted that the offences for which the FIR has been registered against the Petitioners are not serious in nature and are punishable with imprisonment upto two years. He further submitted that the Petitioners shall be unnecessarily harassed, if sent to face trial despite the compromise entered into by the complainant. Counsel also submitted that the compromise has been entered into soon after the registration of the FIR and two of the Petitioners, who are juvenile, can at the most be charged for committing the offence punishable under Section 323/341 IPC and not for Section 354 IPC.

3. Before considering the submissions of counsel for the Petitioners, it is necessary to mention here that if as per Petitioners, all the offences are compoundable, then the remedy to file the writ petition for quashing of FIR does not lie. This Court cannot ignore the fact that the investigation is still in progress and the offences allegedly committed by the Petitioners were after entering into the house of the complainant with the intention to commit the offence like causing hurt, assault and wrongfully restraining the complainant.

4. In order to consider the prayer for quashing of FIR, a brief look at the facts of the case, as narrated in the FIR, is necessary:-

5. The complainant 'J', a young girl aged about 18 years has made statement to the effect that after passing 12th standard she has discontinued her studies and her house is situated on the outskirts of the village. About 3-4 days prior to the occurrence (FIR is dated 09.05.2014), while she was passing through the Gali to go to her house, Sonu (Petitioner No.2), who is resident of the same village, was in the Gali with his vehicle and uttered the words "***Aaja Meri Gadi Me Beth Ja***". She ignored him and went home.

6. It is further stated by the complainant that again on 08.05.2014, Sonu, on seeing her alone in the house, came to her house at about 8 p.m. At that time, her mother had gone to the neighbour's house to take fodder for cattle. Her father was away to take Aata (flour) when Sonu again came to her house, caught hold of her hand and said "***Aaja Chal Mere Saath, Paise Dunga***". In the meantime, her father entered the house and she informed her father about the conduct of Sonu. Her father got her hand released from Sonu and on that Sonu started quarrelling with her father. Resultantly, her father also grappled with him. At that time, Sonu managed to flee from her house. On hearing noise, her mother also reached home. After some time, Sonu along with his brother Nanhe (Satbir), nephew Ravi and Monu (Rakesh) came to their house and started abusing her father. When she requested that she should be heard and her mother also said that "*Hum Tumhara Nahi Khate*". Ravi said "*Jyada Bolti Hai*". Thereafter, Ravi pushed her mother, as a result of which she fell down and was dragged by Ravi. When she tried to save her mother, Ravi hit her head against Neem tree. When her father tried to save her, Nanhe and Sonu started giving beatings to

her father. Her father tried to flee and to save himself, but again Sonu and Nanhe stopped him and started assaulting him. Ravi and Monu both hit her, dragged her in the courtyard of her house and tried to stop her way. **Ravi had also torn her suit from near the neck and pressed her breast** . On hearing noise, when the neighbours gathered all the four Petitioners, while abusing them, left the spot. She informed her brother telephonically, who in turn informed the PCR. They were taken to the hospital in PCR van.

7. On the basis of above statement, case FIR No.442/2014, under Sections 323/341/354 & 34 IPC was registered at P.S. Ali Pur, Delhi.

8. The above facts reveal that the complainant as well as her parents have not been spared even in their house. The manner in which ‘J’ aged about 18 years and her parents have been treated by the Petitioners for offering resistance, must have caused a serious apprehension in the mind of the complainant as well as her parents about the safety of their daughter in the Gali or even inside their own house.

9. It is only after the investigation is completed that the Court has to take cognizance and see on the basis of the charge-sheet as to what offences have been committed by the accused persons and which of them are compoundable as well as which are non-compoundable.

10. During the course of hearing of this writ petition, the complainant was present along with her parents and informed the Court that the elders of the village persuaded her to enter into the said settlement with the Petitioners.

11. The contention of counsel for the Petitioners that all the offences allegedly committed are compoundable is legally not correct. So far as reliance placed by counsel for the Petitioners on the decision of ***Gian Singh***

vs State of Punjab 2012 (9) SCALE 257 is concerned, paragraph-53 of the Report answers the distinction between compounding of cases and quashing of criminal proceedings. Paragraph-53 is reproduced as under-

“53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court Under Section [320](#) is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section [320](#) and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.”

12. In *Ash Mohammad v. Shiv Raj Singh @ Lalla Babu and Anr. JT 2012 (9) SC 155*, wherein an application for cancellation of bail in an offence under Section 365/506 IPC was filed, the Hon’ble Supreme Court, while dealing with the issue of individual liberty and cry of the society for justice has opined as under: -

“It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires. Not for nothing J. Oerter stated:

Personal liberty is the right to act without interference within the

limits of the law.”

13. The inherent power under Section 482 Cr.P.C. can be exercised by this Court (i) to prevent abuse of process of any Court and (ii) to secure the ends of justice. Considering the increasing number of cases of sexual assault in the recent past, if quashing is permitted in such type of matters like the instant case, just because the elders of the village persuaded the complainant and her family to do so, the potential offenders will feel encouraged thereby rendering the penal laws ineffective in their deterrent capacity. If an insensitive attitude is adopted by the Court towards the offences involving sexual harassment/assault, it would increase the already prevailing sense of insecurity among the women folk of the society.

14. In the light of the above, the prayer made in the present writ petition seeking quashing of FIR No.442/2014, under Sections 323/341/354/34 IPC registered on 09.05.2014 at P.S. Alipur, Delhi is declined and the writ petition is dismissed.

(PRATIBHA RANI)
JUDGE

JULY 22, 2014
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