

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : April 26, 2017

+ CRL.M.C. 533/2017

NIRMAL SHARMA & ORS

..... Petitioners

Through: Mr.Kirti Uppal, Senior Advocate with
Mr.Sumit Bansal, Ms.Richa Oberoi &
Mr.Harsh Kumar, Advocates

versus

STATE THR.NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 482 of Cr. P.C. the petitioners seek for quashing of the FIR No. 213/13 dated 20.05.2013, under Section 323/342/354/506/379(1)/34 of IPC registered at Police Station Gazipur, Delhi.

2. It is informed that the charge sheet in this case has been filed and the learned Additional Sessions Judge (Special Fast Track Court), East District, Karkardooma Courts, Delhi, has passed an order dated 03.10.2016 in S.C. No.392/2016 (S.C. No.95/2015) whereby the petitioners – Mani Ram and Nirmala Sharma have been charged for the offences punishable under Sections 323/342/506/34 of IPC and petitioner – Hemant Sharma has been charged for the offence under

Sections 323/342/354/506/34 of IPC.

3. In nutshell, the facts of the case are that respondent No. 2 came in contact with the accused - Sandeep Sharma in January 2003, through Yahoo Messenger and thereafter, friendship developed between them. As per complaint of respondent No. 2 the accused Sandeep Sharma made physical relations with her in natural and unnatural manner without her consent. It is further alleged that on 04.06.2012, the accused Sandeep Sharma befooled respondent No. 2 into some ceremony pretending to be married with her. Thereafter, the accused Sandeep Sharma started ignoring respondent No. 2 and on 18.05.2013 when respondent No. 2 went to the house of the accused Sandeep Sharma, family members, i.e., Mani Ram Sharma (Father), Nirmala Sharma (Mother) and Hemant Sharma (Brother) locked her in a room and gave beatings to her. It is further alleged that the petitioner - Hemant Sharma misbehaved with her and outraged her modesty. They also threatened the prosecutrix that they will kill her. She got medically examined at LBS Hospital on 21.05.2013. Her MLC records showed that she had multiple contused abrasions over forearms, face, back and thigh. There were also some tenderness at some places.

4. In her statement under Section 164 of Cr.P.C., the prosecutrix reiterated the allegations as made in her complaint. After completion of investigation the prosecution had filed charge sheet in court and the petitioners – Mani Ram and Nirmala Sharma have been charged for the offences punishable under Sections 323/342/506/34 of IPC and

petitioner – Hemant Sharma has been charged for the offence under Sections 323/342/354/506/34 of IPC.

5. Learned Senior Advocate appearing on behalf of the petitioners contended that the present case is registered on the complaint dated 20.05.2013 made against the petitioner by respondent No. 2 for the offence under Section 323/342/354/506/34 of IPC.

6. Learned senior counsel for the petitioner further contended that in the statement of respondent No. 2 under Section 164 of Cr. P.C. before the learned Metropolitan Magistrate that it is the submission of the prosecutrix that her marriage with the petitioner was performed at a temple in Sector 11, Rohini according to the Hindu Rites and Rituals and after marriage, the petitioner took her to Meerut home where he forced her to have unnatural sex but she refused to have complete physical relationship till the registration of marriage.

7. It is further contended on behalf of the petitioners that the petitioners and respondent No. 2 have entered into a compromise culminating into a mutual settlement between the parties, whereby the petitioners and the prosecutrix have agreed to put an end to their disputes and the prosecutrix has undertaken to cooperate and give her no objection for quashing of the FIR in question as well as charge sheet dated 25.09.2013. Learned counsel for the petitioners relied on the judgment of the Apex Court in *Prashant Bharti vs. State (NCT of Delhi)*, (2013) 9 SCC 293, wherein the Hon'ble Apex Court quashed the FIR and charge sheet for the offence under Section 328, 354, and

376 of IPC. Learned counsel for the petitioners also relied on judgment of Hon'ble Supreme Court in *Narinder Singh and others vs. State of Punjab and Another*, (2014) 6 SCC 466.

8. Learned Additional Public Prosecutor appears on behalf of the State and referred the Final Report in which the complainant has categorically stated that the accused – Sandeep Sharma committed to marry her and on the pretext of marriage, the petitioner had intimated relationship with her. The complainant has also stated in her complaint that on 04.06.2012 the petitioner befooled her that he is getting married with her. On her asking to get their marriage registered, he tried to befooled her and continued to have oral sex. When she visited the petitioner's parents to take support, they locked her in a room and had gave beatings to her mercilessly and threatened her to keep her mouth shut, otherwise they will kill her. The prosecutrix further specifically alleged that petitioner – Hemant Sharma had misbehaved with her and accordingly he was additionally charged with Section 354 of IPC. Learned Additional Public Prosecutor further contended that the victim had also reiterated the aforesaid contentions in her statement under Section 161 of Cr. P.C. as well as in her statement under Section 164 of Cr. P.C. recorded before the court. In such like cases, only the statement of the victim is sufficient to held the accused guilty for the offences with which the petitioners are charged. The learned Additional Sessions Judge has rightly framed the charges against the petitioners therefore, the same need not to be interfered with at this stage.

9. I have heard the submissions made by learned Additional Public Prosecutor for the State and have also gone through the impugned orders passed by the learned Additional Session Judge framing charges whereby the petitioners – Mani Ram and Nirmala Sharma have been charged for the offences punishable under Sections 323/342/506/34 of IPC and petitioner – Hemant Sharma has been charged for the offence under Sections 323/342/354/506/34 of IPC.

10. Upon perusal of the impugned order dated 03.10.2016, in the considered opinion of this court, it cannot be said that the learned Additional Session Judge has not passed a reasoned order. To challenge the impugned order the accused – Sandeep Sharma had also preferred the revision petition as well as criminal miscellaneous petition for seeking quashing of the FIR in question, which have been dismissed by this court vide separate orders.

11. In the present case, where the petitioners are aggrieved by the same order on charge passed in the same case and by the same Trial Court and filed the present petition for quashing of the FIR on the basis of compromise arrived at between respondent No. 2 and the petitioners. This court observes that Section 376 is also added in the present FIR, which is a serious offence against the society, which cannot be quashed even by consent. This court further observes that the statement of the victim (respondent No. 2) under Section 164 of Cr. P.C. has already been recorded and based on which the charge sheet has been filed and the petitioners have also been charged.

12. So far as judgments relied upon by the petitioners in Prashant Bharti (Supra), this court is of the opinion that in criminal jurisprudence no precedences can be followed and each case should be decided on its own merits. For ready reference, para 22 of the judgment in Prashant Bharti (supra) is reproduced hereunder:-

“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor (2013) 3 SCC 330 wherein this Court inter alia held as under:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C. the High Court has to be fully satisfied,

that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) *Step one*, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) *Step two*, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) *Step three*, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) *Step four*, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

13. Likewise extracts of para 17 of the judgment of Hon'ble Supreme Court in *Narinder Singh (supra)*, is reproduced hereunder:-

*“We would like to expand this principle in some more detail. We find, in practice and in reality, after recording the conviction and while awarding the sentence/punishment the Court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the Court, particularly in those cases where the crimes committed are heinous in nature or depicts depravity, or lack morality. At times it is to satisfy the element of “emotion” in law and retribution/vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. **There may be certain cases which are too obvious namely cases involving heinous crime with element of criminality against the society and not parties inter-se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape, or other sexual offences etc. would clearly fall in this category. After all, justice requires long term vision. On the other hand, there may be, offences falling in the category where “correctional” objective of criminal law would have to be given more weightage in contrast with “deterrence” philosophy. Punishment, whatever else may be, must be fair and***

conducive to good rather than further evil. If in a particular case the Court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two conflicting interests which is to be achieved by the Court after examining all these parameters and then deciding as to which course of action it should take in a particular case.”

14. In the facts of the present case, the victim had specifically alleged in her complaint that she was beaten by the petitioners and also made her statement under Section 164 of Cr. P.C. to the same effect, based upon which the charges have been framed against the petitioners. This court observes that the charges have been framed against the petitioners and while deciding the revision petition (Crl. Rev. P. No.821/2016) as well as quashing petition (Crl. M.C. No.530/2017) preferred by the accused - Sandeep Sharma, this court has opined that the responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so and this court found no illegality or infirmity in the order dated 03.10.2016 passed by the learned Trial Court. Therefore, in these circumstances, the present petition filed by the petitioner is liable to be rejected. However, the petitioners shall have every opportunity to submit and prove their contentions by leading the cogent evidence before the Trial Court and it is the prerogative of the Trial Court to consider all the material evidence placed before it and to pass the appropriate order.

15. Finding no merit in the present petition the same is hereby dismissed.

(P.S.TEJI)
JUDGE

APRIL 26, 2017
pkb

