

\$

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

Reserved on: 3rd May, 2017
Pronounced on: 23rd May, 2017

+ W.P.(CRL) 2681/2016

RUPESH RANJAN

..... Petitioner

Through: Mr. J.K. Singh, Adv. with
petitioner in person.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjay Lao, ASC for the
State with Mr. Siddharth
Sindhu, Adv.
Mr. Praveen Kumar, Adv. for
R-2 with R-2 in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. On 25.06.2016, the second respondent herein made a complaint in writing to the Station House Officer (SHO) of Police Station Timar Pur Delhi and since the said complaint disclosed commission of certain acts constituting a cognizable offence punishable under Section 376 of the Indian Penal Code, 1860 (IPC) within the meaning of Section 154 of the Code of Criminal Procedure, 1973 (Cr.P.C.), First Information Report (FIR) No.300/2016 was registered thereupon.

2. In the said FIR, the petitioner herein is referred to as the perpetrator of the above said offence. The petitioner has come up with the writ petition invoking Article 226 of the Constitution of

India read with Section 482 Cr.P.C. seeking quashing of the said FIR on the ground, *inter alia*, that the parties have settled all their disputes with each other.

3. Notice was issued on the writ petition by order dated 15.09.2016. In response, the second respondent has appeared and has indicated that she is agreeable to the prayer made by the petitioner. The State has filed its response in the form of status report.

4. At the hearing, the learned Additional Standing Counsel submitted that in a case where allegations have been made about the commission of such grave crime as of rape, the recourse to the extraordinary jurisdiction under Article 226 of the Constitution or under Section 482 Cr.P.C. would not be proper or desirable.

5. Submissions on all sides have been heard against the backdrop of the facts alleged in the FIR and stated in these proceedings. It is noted that in the FIR the second respondent had, *inter alia*, alleged that the petitioner had made certain advances towards her indicating his abiding love and proposing marriage and in that course having persuaded her to be in live-in relationship with him during which period he subjected her to sexual intercourse on the promise of marriage. She also made allegations about he having subjected her to physical assault causing physical violence resulting in hurt and certain acts of commission constituting offence of criminal intimidation. She stated that she had been cheated and sexually exploited. In these proceedings it has been stated that the

parties entered into a marriage in Arya Samaj Mandir on 03.07.2016.

6. In *State of Karnataka Vs. M. Devendrappa*, (2002) 3 SCC 89, a bench of three Hon'ble Judges of the Supreme Court had examined the width and scope of the jurisdiction of the High Court for bringing to an end a criminal action by quashing the case, *inter alia*, under Section 482 Cr.P.C., in light of past precedents and observed that such jurisdiction emanated from its inherent power to bring about justice, explaining it thus:-

“6. ... It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly,

carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice....”

(emphasis supplied)

7. In *Gian Singh vs. State of Punjab and Another*, (2012) 10 SCC 303, while dealing with identical issues, another bench of three Hon’ble Judges of the Supreme Court observed thus :-

“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

(emphasis supplied)

8. Pertinent to note, in *Gian Singh* (supra), the Supreme Court held as under:-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society.

(emphasis supplied)

9. The petitioner has relied upon *Narinder Singh & Ors. vs. State of Punjab & Anr.*, (2014) 6 SCC 466 and judgment dated 24.03.2017 of a learned Single Judge of this Court in *Crl.M.C.2454/2016*, titled *Mohit Nagar vs. State & Anr.* to contend that it is a fit case where the court must exercise its extraordinary jurisdiction to bring an end to the criminal action through the FIR in question.

10. It may be mentioned here that the case of *Narinder Singh* (supra) involved allegations, *inter alia*, about the offence of attempt to murder. After tracing the development of jurisprudence on the subject, while drawing a distinction between the power conferred on the High Court under Section 482 Cr.P.C. and the general power of a criminal court to allow compounding of an offence under Section 320 Cr.P.C., the Supreme Court held that the guiding factor in the former jurisdiction would be as to whether the quashing of criminal proceedings would secure the ends of justice or prevent the abuse of process of court. It does appear that in the said discourse, the Supreme Court, *inter alia*, observed that criminal cases having overwhelming and predominantly civil character, particularly those arising out of commercial transactions or “*matrimonial relationship*” or family dispute should be quashed when the parties have resolved their entire dispute amongst themselves. But, in a case where allegations of rape, physical assault and criminal intimidation have been leveled, it cannot be said that the case is one of family dispute or one arising out of matrimonial relationship or is civil in nature. The FIR may have been registered only under the label of Section 376 IPC but the allegations made therein seem to indicate commission of other offences as well.

11. The case of *Mohit Nagar* (supra), decided by a learned Single of this Court, was in an entirely different backdrop. The narration of facts in the said judgment would show that the petitioner had successfully shown to the court that the FIR had been lodged with *mala fide* intention of extorting money, the prosecutrix having married twice in the past and having a subsisting marriage when she

entered into physical relationship with the person she accused of having subjected her to the offences including of rape.

12. In this context, it may be added, as pointed out by learned Additional Standing Counsel that the same learned Single Judge as has authored judgment in *Mohit Nagar* (supra), in background similar to the one brought before this court, in CrI.M.C. 3356/2016, titled *Dharmendra Kumar Neeraj vs. State (Govt. of NCT of Delhi)*, decided on 09.09.2016 declined to quash the FIR on the basis of a similar compromise, referring in this context to the decision of the Supreme Court in *Gian Singh* (supra).

13. In the fact situation at hand, the following observations of the Supreme Court in *State of Madhya Pradesh vs. Madan Lal*, (2015) 7 SCC 681, provide further guidance:-

“18. ... We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the

compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.”

(emphasis supplied)

14. In view of the above, this court is of the opinion that having regard to the nature of offences involved, it would not be proper to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India or Section 482 Cr.P.C. to stop or quash the investigation into the FIR No.300/2016, registered initially under Section 376 IPC by Police Station Timar Pur (North).

15. The petition is thus dismissed.

(R.K. GAUBA)
JUDGE

MAY 23, 2017

vk