

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

Judgment Reserved on: July 27, 2017
% *Judgment Delivered on: August 01, 2017*

+ **CRL.M.C. No.2763/2017**

VIKASH KUMAR @ SONU Appellant
Through: Ms.Meenakshi Arora, Senior
Advocate instructed by
Ms.Sheeba Khan, Advocate.

versus

THE STATE & ANR. Respondents
Through: Ms.Kusum Dhalla, APP for the
State/R-1.
R-2/complainant in person.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. By filing this petition under Section 482 Cr.P.C., the petitioner Vikash Kumar @ Sonu has invoked the inherent jurisdiction of this Court with a prayer for quashing of FIR No.516/2016 under Sections 376(2)(N)/323/506 IPC registered at PS Timar Pur and the consequential proceedings emanating therefrom including the charge-sheet filed.

2. While praying for quashing of FIR and the criminal proceedings emanating therefrom, the petitioner has pleaded that the physical relationship between him and the complainant was consensual since beginning. They have also got married on 26th May, 2017 at Arya

Samaj Mandir, 53, Choti Bazariya Railway Road, Ghaziabad, Uttar Pradesh and the marriage has also been registered. The grounds on which the prayer has been made for quashing of FIR and the criminal proceedings are as under:-

- (i) A false and frivolous FIR has been lodged by respondent No.2/complainant against the petitioner which is pending trial before the learned ASJ of Tis Hazari Court. The petitioner and respondent No.2 fell in love in the year 2005 and since then they were in contact with each other through mobile, e-mail, letters etc.
- (ii) The petitioner got a job in Merchant Navy and whenever he visited Delhi they used to meet. They had physical relationship with mutual consent in July, 2012. However, as both of them are from different caste, the inter-caste marriage was not approved by the family of the petitioner and he had to marry a girl of the choice of his family. The marriage could not work and in the year 2015 ended by a decree of divorce by mutual consent.
- (iii) After the divorce the petitioner and respondent No.2 again came close and the petitioner was serious about this relationship but his parents did not agree whereas respondent No.2 was compelling him to marry her but he wanted to talk to his parents again and requested for more time to make his parents agreeable. This happened on 6th November, 2016 when respondent No.2 visited Kolkata where he was staying to appear in his departmental examination. Under some wrong impression that petitioner was cheating her, immediately on her return to Delhi she got registered FIR No.516/2016 under Sections 376(2)(N)/323/506 IPC.

(iv) After coming to know about the registration of FIR the petitioner surrendered on 3rd December, 2016 and was granted interim bail by the learned ASJ on 20th May, 2017 to enable him to marry the respondent No.2/complainant. The marriage was solemnized on 26th May, 2017 at Arya Samaj Mandir and also registered at Ghaziabad (two photographs of the marriage have been filed along with the petition).

(v) The FIR has been got registered by the complainant due to misunderstanding of facts, in a confused state of mind that the petitioner would not marry her whereas he was trying to obtain consent of his parents.

(vi) The petitioner is a respectable person having status in the society and due to his incarceration, despite marrying the complainant, is causing loss and injury to his reputation as well as too his family.

(vii) Respondent No.2/complainant has decided to live with the petitioner peacefully hence there is minimal chance of the complainant coming forward to support the prosecution's case.

(viii) Consensual physical relationship between the parties does not constitute an offence under Section 376 IPC. Both of them were major and the complainant was a consenting party to the physical relationship between them.

(ix) Continuation of the criminal proceedings would amount to an abuse of the process of the Court and will also have an adverse effect on their life.

3. Ms.Meenakshi Arora, learned senior counsel for the petitioner has requested for quashing of the FIR and the criminal proceedings

pending against the petitioner mainly on the ground that parties to the relationship were major and consenting, hence no offence under Section 376 PC is made out. Further if the case of respondent No.2/complainant was that her consent was obtained on the representation that the petitioner promised to marry her, that promise has been fulfilled now. The petitioner and the complainant are husband and wife which fact is established from the two photographs and marriage certificate placed on record. Learned senior counsel for the petitioner also submitted that the petitioner was always serious in this relationship but could not marry the complainant earlier because the parties belong to different castes and the inter-caste marriage was not approved by the parents of the petitioner. On behalf of the petitioner it has been further submitted that once the promise has been fulfilled by the petitioner by marrying the complainant, nothing survives for adjudication and the entire trial would be an exercise in futility.

4. It has also been urged before the Court that the complainant/respondent No.2 has been appearing before the Court to confirm the factum of marriage and support the petitioner in his prayer to quash the FIR and the criminal proceedings pending against him.

5. In the brief written synopsis filed on behalf of the petitioner, although not pleaded in the petition or mentioned in the lists of dates and events, in para No.1 while responding to the allegations in para No.12 of the FIR about the parties entering into physical relationship in July, 2012, it has been submitted that on 8th July, 2012 both the parties exchanged garland in the temple in presence of their friends

without the knowledge of their parents/family members and entered into physical relationship with mutual consent as both were major at that time. Each time the parties cohabitated, it was with mutual consent. They also lived as husband and wife in the month of September, 2012 and later shifted to Gurgaon under the fear that their family will not accept their relations as the parties were belonging to different castes.

6. In support of her contentions, learned Senior Advocate for the petitioner has placed reliance on the following decisions:-

- (i) Rajiv Thapar & Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330
- (ii) Narinder Singh & Ors. Vs. State of Punjab & Anr., Criminal Appeal No.686/2014 arising out of SLP(Criminal) No.9547/2013
- (iii) Mohit Nagar Vs. State & Another, Crl.M.C. No.2454/2016 & Crl.M.A.10521/2016 decided on 24th March, 2017.
- (iv) Mr.Manteshwar Hanumantrao Kattimani Vs. State of Maharashtra and Anr., Crl. Application No.1419 of 2016 decided on 2nd December, 2016.
- (v) Jaya D.Ovhal Vs. State of Maharashtra, 2015 SCC Online Bom 3482 decided on 11th June, 2015.
- (vi) Deepak Gulati vs. State of Haryana AIR (SC) 2071.

7. I have considered the oral as well as written submissions advanced by learned Senior Advocate for the petitioner and also gone through the record.

8. The case FIR No.516/2016 under Sections 376(2)(N)/323/506 IPC was registered at PS Timar Pur on 9th November, 2016 on the basis of statement made by complainant/respondent No.2 'P' (name

withheld to conceal her identity) wherein she mentioned about her consent to have physical relationship being obtained on promise to marry but the petitioner getting married to some other lady on 16th December, 2012. In the year 2015 after obtaining divorce from his first wife, he again entered into physical relationship on promise to marry her but again backed out.

9. In order to understand the nature and gravity of the offence as alleged in the FIR, it is necessary to refer to the statement under Section 164 CrPC of the complainant/respondent No.2 which was recorded on 10th November, 2016 i.e. on the next day of registration of the FIR.

10. As per the statement under Section 164 CrPC, the version of the complainant/respondent No.2 is that the petitioner was residing near her house and love relationship between the two started on 23rd May, 2005. The petitioner left for Mumbai to join T.S.Chanakya Nautical Science to study for Merchant Navy. The petitioner insisted for sexual relations but she insisted for the same only after the marriage, as a result of which he started ignoring her. In March/April, 2012, he mailed from the ship that his parents had finalized a girl for him and it was not possible for him to marry her (complainant). However, when he came to Delhi, he insisted that only if she is willing to have sex with him that he would marry her. She agreed for having sex as it was a long relationship and she did not want to lose the petitioner. The parties continued to have physical relationship till October, 2012 when again the petitioner started boycotting and neglecting her. In November, 2012, the petitioner informed that his family was not

agreeing for the marriage, hence he was going to marry the girl of his family's choice and all efforts by the complainant to make him agreeable to the marriage with her and her efforts to take her parents to his house were rejected. In the meantime, her father fell ill and expired on 25th November, 2012 and on the same day, she came to know that petitioner got engaged and married on 16th December, 2012 to another girl. Again on 25th December, 2012 she received a call from the petitioner that he was feeling sorry and missing her. At that time, she was under treatment for depression. The wife of the petitioner also started abusing her and her family by calling them and threatening her. She changed her mobile number and finished all her contacts with the petitioner and started making preparations of UPSC Exams. She did not reply to his mails also. In July, 2015 the petitioner called her mother and insisted her (complainant) to meet him. The petitioner informed her that he had taken divorce and wanted her to return in his life and promised to marry her. After lot of persuasions by the petitioner, she met the petitioner in July, 2015. The petitioner felt sorry and assured to marry her this time. She forgave him in the hope that this time he would definitely marry her. Whenever the petitioner came to Delhi, he used to have physical relations with her on promise to marry and also one day filled 'sindoor' in her 'maang' and said that he has got entered her name in his company and bank account as his wife which was enough proof and again left for his ship. In July, 2016, when he returned, again he continued insisting for sex very frequently and she had no option but to agree. She was cautioned by some of his friend that the petitioner

would not marry her and rather he was just using her. In October, 2016, he again started ignoring her like it happened in 2012 and on coming to know that the petitioner had to appear in some examination in Kolkatta on 8th November, 2016, she went to Kolkatta to meet him but there she was informed by the petitioner that he has been engaged to another girl and he did not consider it necessary to inform her. On 7th November, 2016 he again insisted for sex and despite the fact that she was having periods, he forcibly had sex with her. When she said that she would report the matter to the police, she was threatened by the petitioner saying that he will prove that she was a prostitute and was extorting money from him. On that night, not only he had given beatings to her but also did *jabardasti* with her telling her that if she make a complaint, she would be defamed and he started abusing her and her family. She requested him to delete her photographs and though he deleted some of the photographs, other photographs wherein she was in innerwear, were not deleted. The petitioner also allegedly said that if she report to the police or to *Vakil*, he would purchase all of them and she should go back as nothing can be done.

11. After coming to Delhi, she went to the police station but police did not register her report. Then on the advice of some of her friend, she called PCR and thereafter visited the office of DCP and met Ms.Isha Pandey, IPS. At the behest of DCP, the FIR No.516/2016 under Sections 376(2)(N)/323/506 IPC was registered at PS Timar Pur. After quoting the indecent language in which she was abused by the petitioner, she concluded her statement under Section 164 CrPC

praying that '*Mujhe justice chahiye. Main aur kuch nahi kehna chahti*'.

12. The trial in the instant case is at the stage of prosecution evidence. The submission made by Ms.Meenakshi Arora, learned Senior Advocate for the petitioner is that since the parties have married and marriage photographs and marriage certificate are place on record and the complainant is present before the Court, no useful purpose will be served by making the petitioner to face trial when the complainant is not likely to support the prosecution's case and that in such type of cases, pendency of the trial will have adverse effect on the matrimonial life of the parties and will be an exercise in futility.

13. The question that arises for consideration is whether the mere fact that the parties have allegedly got married should be a reason good enough to quash the FIR registered under Sections 376(2)(N)/323/506 IPC and consequential proceedings emanating therefrom.

14. The decision reported as Rajiv Thapar & Ors.Vs. Madan Lal Kapoor (Supra) relied upon by learned Senior Advocate for the petitioner lays down the guidelines for quashing of FIR and the proceedings pursuant thereto.

15. In the decision reported as Narinder Singh & Ors. Vs. State of Punjab & Anr. (Supra) relied upon by learned Senior Advocate for the petitioner, the FIR No.121/2014 was registered under Section 307/324/323/34 IPC and the case was at the stage of recording of evidence. At that juncture, after entering into a compromise, a petition under Section 482 CrPC was filed by the petitioners/accused persons

for quashing of the criminal proceedings. While noting that in view of the compromise between the parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case and the chance of conviction, therefore, appeared to be remote and in view of the compromise between the parties, the proceedings were quashed.

16. Learned Senior Advocate for the petitioner cannot draw much support by relying upon the decision in Narinder Singh & Ors. Vs. State of Punjab & Anr., (Supra), as in the subsequent decision reported as State of Madhya Pradesh vs. Deepak AIR 2014 SC 3747 authored by the same pen, in a case under Section 307 IPC, prayer for quashing of the criminal proceedings was declined. While extracting para 29 of the decision in Narinder Singh & Ors. Vs. State of Punjab & Anr. (Supra), it was held in paras 13 and 14 of the report as under:-

‘13. It is clear from the reading of the passages extracted above, that offence Under Section 307 is not treated as a private dispute between the parties inter se but is held to be a crime against the society. Further, guidelines are laid down for the Courts to deal with such matters when application for quashing of proceedings is filed, after the parties have settled the issues between themselves.

14. When we apply the ratio/principle laid down in the said case to the facts of the present case, we find that the injuries inflicted on the complainant were very serious in nature. The accused was armed with sword and had inflicted blows on the forehead, ear, back side of the head as well as on the left arm of the complainant. The complainant was attacked five times with the sword by the accused person out of which two blows were struck

on his head. But for the timely arrival of brother of the complainant and another lady named Preeti, who rescued the complainant, the attacks could have continued. In a case like this, the High Court should not have accepted the petition of the accused Under Section 482 of the Code.'

17. In the decision reported as State of M.P. vs. Manish & Ors. (2015) 8 SCC 307, again the scope and power of the High Court under Section 482 CrPC to quash the criminal proceedings on the basis of settlement in a heinous/serious offence has been dealt with at length in the light of the decision of the Supreme Court by a Bench of three Judges in Gian Singh vs. State of Punjab (2012) 10 SCC 303. In the case State of M.P. Vs. Manish & Ors. (*Supra*) the State preferred an appeal against the decision of High Court of Madhya Pradesh in Misc. Criminal Case No.4013/2013 whereby the High Court in exercise of its power under Section 482 CrPC quashed the FIR No.512/2012 under Sections 307/294/34 IPC on the plea that the dispute has been amicably settled. The scope of the power under Section 482 CrPC to quash the proceedings in a heinous and serious offences has been dealt with in paras 4 to 9 of the report as under:-

'4. Therefore, the moot question that arises for consideration is whether based on out of Court settlement alleged to have been reached between the private parties, the offences of this nature falling Under Sections 307, 294 and 34 Indian Penal Code which are not covered by Section 320 Code of Criminal Procedure can be taken note of and such orders of quashing of the proceedings can be passed in exercise of powers Under Section 482 Code of Criminal Procedure.

5. The question is no longer *res integra*, inasmuch as the Three-Judge Bench of this Court in Gian Singh v. State of Punjab and Anr. reported in MANU/SC/0781/2012 : (2012) 10 SCC 303 which has been subsequently followed in a number of other decisions including the recent decision in State of M.P. v. Deepak and Ors. reported in MANU/SC/0797/2014 : (2014) 10 SCC 285, clearly sets out as to in what circumstances and in what type of cases such exercise of inherent powers Under Section 482 Code of Criminal Procedure can be invoked *de hors* Section 320 Code of Criminal Procedure for recognizing such out of Court settlement for the purpose of quashing of criminal proceedings.

6. The Three-Judge Bench decision in *Gian Singh* (supra) is an illuminating judgment on this issue. In paragraph 61 ultimately the position has been set out in clear terms 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 F.I.R. 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. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the

criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

(Emphasis added)

7. When we apply the principles set down therein, it can be stated that when it comes to the question of compounding an offence Under Sections 307, 294 and 34 Indian Penal Code along with Sections 25 and 27 of the Arms Act, by no stretch of imagination, it can be held to be an offence as between the private parties simpliciter. Inasmuch as such offences will have a serious impact on the society at large, it runs beyond our comprehension to state that after the commission of such offence the parties involved have reached a settlement and, therefore, such settlement can be given a seal of approval by the Judicial Forum.

8. In the circumstances, the High Court unfortunately having failed to appreciate the said legal position, the impugned order cannot be sustained. We are, therefore, convinced that in a situation where the private Respondents herein are facing trial for offences Under Sections 307, 294 read with 34 Indian Penal Code as well as Sections 25 and 27 of the Arms Act, the cases pending trial before the Court in Criminal Case No. 2602 of 2013, as the offences are definitely as against the society, the private Respondents will have to necessarily face trial and come out unscathed by demonstrating their innocence. The impugned order is, therefore, set aside and the Trial Court is directed to proceed with the trial in accordance with law.

9. With the above observations and directions, the appeal stands allowed.'

18. Thus, in view of the decision of the Supreme Court in Gian Singh vs. State of Punjab (Supra), on the basis of amicable settlement in cases where nature of offence is heinous/serious as laid down specified by the Supreme Court in Gian Singh's case, criminal proceedings cannot be quashed by invoking the jurisdiction of High Court under Section 482 CrPC.

19. In the case Mohit Nagar vs. State & Anr. in Crl.M.C. No.2454/2016 decided on 24th March, 2017 relied upon by learned Senior Advocate for the petitioner, the proceedings in case FIR No.135/2016 under Sections 376/506 IPC, PS Greater Kailash-I have been quashed by the Co-ordinate Bench of this Court mainly on the ground that complainant was already married and had not obtained divorce from her husband. Thus, there was no question of misconception of fact or giving her consent to have physical relations on the promise of the petitioner to marry her. It was held that on the basis of undisputed facts and material collected during investigation, no case is made out against the petitioner to proceed further. Applying the guidelines laid down by the Supreme Court in Rajiv Thapar's case (Supra), the FIR and proceedings pursuant thereto were ordered to be quashed to prevent the misuse of the criminal justice system and also to prevent the abuse of the process of the Court.

20. The two decisions relied upon by learned Senior Advocate for the petitioner in Mr.Manteshwar Hanumantrao Kattimani Vs. State of Maharashtra and Anr. (Supra) and Jaya D.Ovhal Vs. State of Maharashtra (Supra) are not binding precedents. Otherwise also, while considering prayer of the petitioner for quashing the FIR and

consequential proceedings emanating therefrom, guiding principles are laid down in Gian Singh's case (Supra).

21. The petitioner could not seek any assistance by placing reliance on Deepak Gulati vs. State of Haryana (Supra) as it was an appeal against conviction for committing the offence punishable under Section 365/366/376 IPC wherein by giving benefit of doubt, the appellant/accused was acquitted.

22. It would also be apposite to mention here that in a decision dated 3rd August, 2015 by Co-ordinate Bench of this Court in CrI.M.C. No.1824/2015, the petition under Section 482 CrPC filed by the petitioner for quashing of FIR registered under Section 376 IPC on the ground that complainant has got married to the petitioner, has been dismissed by passing the following order:-

“This is a petition seeking quashing of the FIR No.163/2015 registered under Section 376 of the IPC at the behest of respondent No.2. Respondent No.2 is present. She is an adult stated to be 27 years of age. Her presence has been identified by the Investigating Officer. She states that she in fact wishes to marry the petitioner and the FIR has been got registered under a misunderstanding. She does not wish that any action should be taken against the petitioner. The petitioner is stated to be a Government servant.

In view of this factual matrix, the petitioner be not arrested till the time when the statement of the prosecutrix is recorded before the Sessions Judge.

Learned Public Prosecutor for the State under instructions from the Investigating Officer states that

challan is almost ready and shall be filed positively within two weeks. The trial Judge will endeavour to record the statement of the prosecutrix as early as possible.

This Court is otherwise not inclined to entertain a quashing petition under Section 376 of IPC in view of the judgment of the Apex Court reported as 10 SCC 303 Gian Singh Vs. State of Punjab and Anr.,

With these directions, petition disposed of.

Order dasti under the signatures of the Court Master.”

23. The above order passed in Crl.M.C. No.1824/2015 declining the prayer for quashing of the criminal proceedings despite the fact that the parties got married, was challenged by filing a Special Leave to Appeal No...../2016 (Crl.M.P. No.1865/2016) before the Supreme Court. The SLP also stands dismissed vide order dated 8th February, 2016.

24. It may not be out of place to record here that in the two marriage certificates placed on record, in one photograph only the bride and bridegroom are seen sitting in front of ‘Hawan Kund’ and in second photograph, bride is touching the feet of bridegroom and what to talk of friends/relatives, even the priest solemnising the marriage is not visible. The marriage certificate records the marital status of the bridegroom (petitioner) as ‘unmarried’ though admittedly he is divorcee.

25. In view of settled legal position enumerated in Gian Singh's case, (Supra), the criminal proceedings emanating from an FIR registered with allegations of rape, which is an offence against society, despite the alleged marriage of the petitioner with the complainant/respondent No.2, cannot be quashed in exercise of powers vested in this Court under Section 482 Cr.P.C.

26. The petition is hereby dismissed.

27. As prayed, copy of the order be given dasti to learned counsel for the parties.

AUGUST 01, 2017
'pg/st'

PRATIBHA RANI
(JUDGE)



सत्यमेव जयते