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

+ CRL.M.C. 2777/2017

SUBHASHIS LENKA

..... Petitioner

Through: Ms.Namita Roy, Advocate with
petitioner in person.

versus

STATE & ANR

..... Respondents

Through: Mr.Kusum Dhalla, APP for the
State/R-1 with SI Hans Raj, Ps
Dwarka.

Mr.N.S.Dalal and Mr.Devesh Pratap
Singh, Advocates for R-2 with R-2 in
person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

13.09.2017

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1. By way of this petition filed under Section 482 Cr.P.C., petitioner is seeking quashing of case FIR No.423/2016 under Section 354(A)(1) IPC, PS Dwarka and consequential proceedings arising therefrom.

2. The petitioner is brother-in-law (devar) of the complainant/respondent.

3. Briefly stating, the FIR in question has been registered on the basis of the complaint made by the complainant that on 5th September, 2016 in the morning when her husband left for his office and she was preparing lunch in the kitchen and getting ready for her office, the petitioner came and tried to touch her inappropriately. She tried to stop him and called the police. It is also stated in the complaint that earlier also the petitioner tried to do these type of acts and she also informed her husband about the same but her husband did not believe her.

4. It is mentioned in the petition that there is also a matrimonial dispute between complainant/respondent No.2 and her husband i.e. brother of the present petitioner. The husband of the respondent No.2 had also filed a divorce petition before the Family Court.

5. It is mentioned in the petition that during the pendency of the proceedings, the matter in divorce petition was referred to Counselling Cell where parties have arrived at an amicable settlement and settled all their disputes. The respondent No.2/complainant and her husband also agreed to dissolve their marriage by mutual consent. The copy of the settlement has been annexed with this petition.

6. In terms of the settlement arrived at between the parties before the Counselling Cell, today learned counsel for the petitioner has handed over to the complainant/respondent No.2 a bank draft for a sum of ₹5 lacs which has been accepted by the complainant/respondent No.2. Copy of the bank draft has also been placed on record.

7. Learned counsel for the petitioner submits that since the parties have settled all their disputes before the Counselling Cell, Dwarka Family Court and First Motion Petition filed by the complainant/respondent No.2 and her husband i.e. brother of the petitioner has already been allowed, no useful purpose would be served by continuing the criminal proceedings against the present petitioner. Learned counsel for the petitioner prays for quashing of the FIR in question qua the petitioner.

8. Complainant/respondent No.2 is present in person and affirms the factum of settlement arrived at before the Counselling Cell. She also submits that she has received the bank draft of ₹5 lacs today from the petitioner and that she has no objection if the FIR in question is quashed.

9. Though the petitioner has been charged with the offence punishable under Section 354(A)(1) IPC, which is a non-compoundable offence, but in the decision in the case of ***Gian Singh v State of Punjab & Anr. 2012 (9) SCALE 257***, the three Judges Bench of the Supreme Court dealing with the issue of quashing of FIR has laid down the following guidelines:-

“57. 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 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 favour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

10. In view of the legal position as laid down in Gian Singh's case (supra) and the amicable settlement arrived at between the parties, I am of the considered view that no useful purpose would be served by continuing the criminal proceedings against the petitioner which will only be an exercise in futile and wastage of precious time of the Court.

11. Accordingly, case FIR No.423/2016 under Section 354(A)(1) IPC, PS Dwarka and consequential proceedings arising therefrom are hereby quashed in terms of the settlement arrived at between the parties before the Counselling Cell, copy of which has been placed on record.

12. The petition is allowed.

Order *dasti*.

PRATIBHA RANI, J.

SEPTEMBER 13, 2017

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