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

+ **W.P.(CRL) 3017/2017**

MOHD SHOKAT

..... Petitioner

Through: Mr.Abhijeet Bhagat, Advocate with
Petitioner in person.

versus

THE STATE & ANR

..... Respondents

Through: Ms.Richa Kapoor, ASC for the
State/R-1 with Mr.Ashish Negi,
Advocate with ASI Tej Ram, PS
Nazafgarh.
Mr.Ram Kanwar, Advocate with
Respondent No.2/complainant in
person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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31.10.2017

CrI.M.A. No.17638/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.240/2017 under Sections 354D/451/506 IPC & 12 POCSO Act, registered at PS Najafgarh on the basis of Memorandum of Understanding.

2. Notice. Learned ASC as above accepts notice on behalf of the State.
3. When the petitioner was asked about the terms of the settlement arrived at with the complainant, he claimed himself to be innocent and falsely implicated. When the petitioner was asked to comply with the terms and conditions incorporated in the Memorandum of Understanding whereby he was required to apologise to the first party i.e. the complainant's daughter (a minor, aged about 17 years) that he will not try to meet the daughter of the complainant and return all her photographs, the petitioner has not come forward to comply with the above terms and conditions of the Memorandum of Understanding.
4. 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 observed as under:-

“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.”

5. As the petitioner is neither willing to tender apology nor to comply with other terms of the Memorandum of Understanding, and taking into consideration the legal position enumerated in Gian Singh's case, (Supra) and the serious allegations levelled against the petitioner, I do not find it to be a case where in exercise of powers vested in this Court under Article 226 of Constitution of India, the FIR and the proceedings emanating therefrom can be quashed.

6. The petition is hereby dismissed.

PRATIBHA RANI, J.

OCTOBER 31, 2017/ 'hkaur'

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