

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

% Decided on: 22nd March, 2018

+ **W.P.(CRL) 764/2018**

SHAMSHAD & ORS

..... Petitioners

Represented by: Mr. Habibur Rahman,
Advocate.

versus

THE STATE & ANR

..... Respondents

Represented by: Ms. Kamna Vohra, Additional
Standing Counsel for State with
SI Arun Kumar and W/SI
Neetu, PS Bhajan Pura.
Ms. Prabha Mishra, Advocate
for respondent No.2 with
respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition the petitioners seek quashing of FIR No. 88/2016 under Sections 376/377/506/34 IPC registered at PS Bhajanpura, Delhi and the proceedings pursuant thereto.
2. The petitioners had earlier filed the a petition seeking quashing of FIR on the ground that parties have settled the matter however, considering that the offence alleged were serious in nature and quashing of the FIR with such serious offences cannot be done on the basis of settlement, the petition was dismissed as withdrawn vide order dated 18th December, 2017 with liberty to the petitioners to file petition seeking quashing on merits. Hence the present petition seeking quashing of FIR and the proceedings pursuant thereto on merits.

3. Learned counsel for the petitioners submits that there is an inordinate delay in registration of the FIR as in the statement of the prosecutrix recorded on 14th July, 2015, she stated that the alleged incident took place two months ago and the FIR was registered after seven months of the recording of the statement on 20th January, 2016. Despite the fact that the prosecutrix alleged that she was dragged to the top floor by pulling her hair, no injury was received and no MLC in this regard was prepared. The complainant has leveled similar allegations against the other persons as well and thus is a habitual complainant. Hence the FIR in question be quashed.

4. In the above noted FIR the complainant alleged that she had been married with the petitioner No.1 for the last 16 years and out of the wedlock four daughters were born. Her husband re-married with another lady without her consent and started beating her and her daughters as she belonged to a poor family. Her husband wanted to leave her and divorce her after his second marriage. Two months ago while she was in her room her husband along with his friend Raja came to her room and asked her to remove her clothes and thereafter she was sexually assaulted by Raja and then by her husband. Her husband committed unnatural sex with her and threatened to kill her and her younger daughter by throwing them from the terrace, if she disclosed the incident. Two days after the incident at about 11.00 PM Raja and Uvesh came to her room, they were drunk and raped her and threatened to kill her. On 7th July, 2015 her husband Shamshad asked his brother Ishtikar to kick her and throw her away. Shamshad violently slapped her on her ear. Ishtikar caught hold of her hair and dragged her upstairs and after assaulting her threw her out of the house. She went to her parental home. Her brother gave a call at 100 number when police arrived

but as there was no external injury she refused to get herself medically examined. She stated that now since her condition was very bad she was giving her statement. Later MLC of the prosecutrix was got conducted wherein she gave the same alleged history to the doctor and even in her statement recorded under Section 164 Cr.P.C. she reiterated the same facts.

5. Learned counsel for the petitioner refers to the decisions reported as AIR 2017 SC 1884 Vineet Kumar & Ors. vs. State of U.P. & Anr. and 2017 SCC Online Del 7616: 2017 (2) JCC 1206 Mohit Nagar vs. State & Anr in support of his arguments seeking quashing of the FIR.

6. In Vineet Kumar (supra) the investigating agency after investigation of the case came to the conclusion that criminal proceedings were initiated so as to avoid repayment of the amount of loan taken and suffer consequence under Section 138 Negotiable Instruments Act for which reason a cancellation report was filed by the Investigating Officer. On the complainant filing a protest petition the same was allowed which was also under challenge before the Hon'ble Supreme Court having failed in the petition under Section 482 Cr.P.C. filed before the High Court. In the said FIR affidavits of various persons were collected and on the basis of the same, the Investigating Officer came to the conclusion that no such incident had taken place. Thus the Hon'ble Supreme Court came to the conclusion that the FIR was got registered malafidely, thus liable to be quashed.

7. In Mohit Nagar (supra), this Court following the guidelines in the decision reported as 2013 (3) SCC Rajiv Thapar & Ors. vs. Madan Lal Kapoor held that when the complainant in the said FIR lodged the complaint her marriage with her earlier husband had not dissolved nor declared nullity, hence there could be no promise of marriage to the complainant, since the

complainant therein could not have lawfully married the petitioner therein and thus quashed the FIR in question.

8. No doubt inter se the two families, that is, the petitioners' family and that of the victim, who is his wife of petitioner No. 1, number of FIRs and cross-FIRs have been registered and the matter appears to have been settled between the parties however, considering the nature of allegations and the fact that the prosecutrix even in her statement under Section 164 Cr.P.C. reiterated her version this Court finds no ground to quash the FIR on merits.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 22, 2018

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