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

+ **CRL.M.C. 4737/2017**

AJAY @ NATHU

..... Petitioner

Through Mr. Ujjwal Kumar, Mr. Mohit Kumar
Singh, Advs.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through Mr. Raghuvinder Varma, APP for
State with SI Jitender PS KNK Marg.
R2 & R3 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **10.01.2018**

The respondent no. 3 is still minor, aged 16 years.

Vide the present petition, the petitioner seeks quashing of the FIR No. 1330/15, PS KN Katju Marg, under Section 363 of the Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the parties pursuant to the Mediation Settlement dated 18.09.2017 arrived at the Delhi Mediation Centre, Rohini Court, Delhi.

Learned APP for the State opposes the prayer seeking quashing of the FIR submitting to the effect that the offence punishable under Section 363 of the Indian Penal Code, 1860 ought not to be allowed to be quashed.

As per the averments made in the settlement, at the time of the alleged commission of the offence, the victim was aged 14 years. The victim is present today and has stated that her age is 16 years in reply to a specific Court query. In reply to another specific Court query, she has further stated

to the effect that she used to go to school earlier but that she is not going to the school from the time when the accused had taken her out. She has further stated in reply to a specific Court query as to why had she gone with the petitioner to which she responded that the petitioner stated that he was taking her out for a visit.

On behalf of the petitioner, it has been submitted that there is nothing to indicate that any threat was meted out by the petitioner to the respondent no. 3.

Placed on record on the case diary produced by the Investigating Officer SI Jitender PS KNK Marg is the statement under Section 164 of the Criminal Procedure Code, 1973 of the victim / prosecutrix dated 11.01.2016 in which she has stated that in December, 2015 she does not recall the date, when she was about to go to school when her **“Bhabhi Ke Chacha”** i.e. the present petitioner asked her not to go to the school and stated that **“hum ghumne bahar jayenge”** and that she accompanied him and whereafter he take her to Village Besupatti and kept her there and after two days, she telephoned her father and on the next day, her mother and her brother came to bring her back and she came back with them that there was nothing wrong that took place with her and that she does not want to say anything.

Without any observation on the merits or demerits of the evidence that may be led in the matter and taking into account the factum that the offence punishable under Section 363 of the Indian Penal Code, 1860 is *per se* not compoundable and also taking into account the statement of the victim i.e. the respondent no. 3 wherein she categorically stated in reply to a specific Court query that she stopped going to school from the date when

she had been taken out by the petitioner, and that she was earlier studying in the 7th standard, in the facts and circumstances of the instant case, it is not considered appropriate nor in the interest of justice to permit the quashing of the FIR in view of the seriousness of the alleged offence and also in view of the observations in the verdict of the Hon'ble Supreme Court in ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303, to the effect : -

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is

hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.” [Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]”

(emphasis supplied)

The petition is dismissed.

ANU MALHOTRA, J

JANUARY 10, 2018/MK