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

+ **W.P.(CRL) 666/2019**

SMT. SADEEQA DARYABI

..... Petitioner

Through Mr M.R. Singh Sisodia, Advocate.

versus

STATE & ANR.

..... Respondents

Through Mr Rajesh Mahajan, ASC for State with
Mr Jyoti Balbar, Advocate with SI Abhishek P.S.
Aman Colony.

Mr Siddharth Luthra, Senior Advocate with
Mr Niraj Mishra, Mr Himanshu Gupta, Mr Akshay
Sehgal and Mr Manish Jha, Advocates for R2 with
respondent no. 2 in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.10.2019

1. The petitioner has filed the present petition, *inter alia*, praying that FIR bearing No. 53/2019 under Sections 385/389 of the Indian Penal Code, 1860 (IPC) registered with P.S. Amar Colony, be quashed.
2. The said FIR was registered at the instance of respondent no. 2. Respondent no. 2 is a medical doctor by profession. He stated that he had established a physical relationship with the petitioner sometime in the year 2017. He had stated that, thereafter, they had stopped chatting and meeting with each other. He stated that the petitioner had contacted him on 02.02.2019 and reminded him of their past relationship involving physical

intimacy. And, had expressed her desire to meet respondent no. 2 again. He stated that they established physical intimacy once again and during the said period, the petitioner had captured his nude photographs. He stated that the petitioner had, thereafter, demanded a sum of ₹10,00,000/- (Ten Lakhs only) for purchasing a car and starting a restaurant, which respondent no. 2 declined. Respondent no.2 alleged that in view of his refusal to provide her the money, she had threatened to misuse the photographs. He alleged that she had also extended threats to register a case of rape against respondent no.2.

3. The petitioner and respondent no. 2 have since resolved their differences and disputes and jointly pray that the FIR in question be quashed.

4. Mr Rajesh Mahajan, learned ASC, submits that since the present FIR has been registered for an offence under Sections 385/389 of the IPC, the same cannot be quashed. He referred to the order dated 07.12.2018 passed by this Court in ***Kapil Kalra v. State & Anr.: W.P. (Crl.) 3106/2018*** and the order dated 18.04.2018 passed by this Court in ***Manjeet Kaur & Anr. v. The State Government of NCT of Delhi: W.P. (Crl.) 1141/2018*** in support of his contention that an FIR registered under Sections 385/389 of the IPC cannot be quashed. He also referred to the decisions of the Supreme Court in ***State of Maharashtra and Ors. v. Arun Gulab Gawali and Ors.: (2010) 9 SCC 701*** and ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another: (2017) 9 SCC 641*** in support of his aforesaid contention.

5. Mr Siddharth Luthra, learned Senior Counsel appearing for

respondent no. 2, countered the aforesaid submissions. He submitted that given the nature of the relationship between the petitioner and respondent no.2 as well as the fact that they have no past antecedents, the present petition ought to be allowed. He also referred to the decisions of the Coordinate Bench of this Court in **Arvind Kaushik & Ors. v. State: Crl. M.C. 1172/2013 decided on 28.01.2015** and **Ranbir Saini v. State (GNCT of Delhi) & Anr.: Crl. M.C. No. 486/2016 decided on 05.02.2016** and pointed out that this Court had, in the said cases, quashed FIRs under Sections 383/385/389 of the IPC.

6. Mr Luthra also submitted that it may not be apposite to charge the petitioner with the offence under Section 385 of the IPC. He submitted that the gravamen of the alleged was in the nature of intimidation. He submitted that there could be no impediment in quashing of an FIR of the said nature on the basis of a settlement arrived at between the concerned parties. He referred to the decisions of the Supreme Court in **Dhananjay @ Dhananjay Kumar Singh v. State of Bihar and Another: (2017) 14 SCC 768** and **Romesh Chandra Arora v. State: AIR 1960 SC 154** in support of his contention that the FIR ought not to have been registered under Sections 385/389 of the IPC.

7. While there is considerable merit in Mr. Mahajan's contention that an FIR under Sections 385/389 of the IPC ought not to be quashed merely because the concerned parties have arrived at a settlement, as the offence is of a grave nature. He also stated that such offences have an overwhelming adverse effect on society and thus, prosecution of the offender cannot be subject matter of consensus between the accused with the complainant.

8. However, it is also trite that the question whether an FIR ought to be quashed on the basis of a settlement arrived at between the complainant and the accused must be viewed, not on the basis of nomenclature of the offence, but by examining the nature of the offence and the facts surrounding the same. Whereas FIRs relating to certain heinous crimes such as murder, robbery, dacoity, etc. cannot be quashed; other offences which have a predominantly civil character and arise out of commercial transactions or matrimonial relationships can be quashed if the concerned parties arrive at a settlement. In addition to such categories of offences, there is a third category of offences where the question whether they are heinous in nature is required to be examined in the factual context in which such allegations are made.

9. It is also relevant to bear in mind that an FIR is only in the nature of an information that requires to be investigated. The same cannot be viewed in isolation and divorced from the surrounding facts of the case.

10. In the present case, although it is alleged that the petitioner has committed the offence of extortion, a closer examination of the FIR indicates that it stems from the intimate relationship enjoyed by the petitioner and respondent no. 2 with each other. It is alleged that the petitioner had demanded money for buying a car and opening a restaurant; it is apparent that such demands had been made in view of the long-standing intimate relationship between the petitioner and respondent no.2. This relationship, according to respondent no.2, had turned ugly and the petitioner had held out threats against him. The said allegation cannot be understood in isolation and without taking into account the genesis of the

same; which was the close relationship between the two parties. Thus, although in the present case the offence alleged is a serious one, nonetheless, it is to some extent circumscribed by the relationship enjoyed between the petitioner and respondent no.2. This does lend a private character to the allegation, albeit to a very limited extent.

11. This Court in ***Babu Khan and Anr. v. State and Ors.: W.P. (Crl.) 2227/2019 decided on 05.09.2019***, had also expressed a view that an FIR indicating an offence under Section 304-A of the IPC could be quashed on the basis of the settlement arrived at between the accused and the victim, if in the context of the facts of that case, ends of justice would be served by doing so. And, it is not apposite to adopt a dogmatic approach to reject such a request only on the basis of the nomenclature of the offence.

12. It would not be apposite to apply the ratio of the decision of the Supreme Court in ***Arun Gulab Gawalia (supra)*** in the facts of the present case. The allegation in that case related to extortion by a person who was stated to be a part of organized crime. Proceedings under the Maharashtra Control of Organised Crime Act, 1999 had also been initiated against the said accused. Clearly, the present case cannot be viewed on the same footing. There is no allegation of any crime of extortion by an organized crime syndicate. The decision in the case of ***Parbatbhai Aahir (supra)*** also turned on its own facts. In that case, it was alleged that the accused were involved in grabbing of valuable parcels of land in the past as well. The accused were also alleged to be involved in nefarious activities of opening bogus bank accounts. The Supreme Court pointed out that it would not be in the interest of society to quash the FIR on the ground of settlement arrived at

with the complainant. However, it is relevant to note that in that case, the Supreme Court had concurred with the view as authoritatively set out in the oft quoted decisions of the Supreme Court in ***Gian Singh v. State of Punjab: (2012) 10 SCC 303*** and ***Narinder Singh v. State of Punjab: (2014) 6 SCC 466***.

13. Following the aforesaid decisions, this Court is unable to accept that the FIR in the present case ought not to be quashed on the basis of the settlement arrived at between the complainant and the accused.

14. In view of the above, considering that the FIR in question is at the stage of investigation and a chargesheet has not been filed as yet, this Court does not consider it necessary to examine whether the allegations made under Sections 385/389 of the IPC are established in this case. In this view, it is not necessary to consider the applicability of decisions of the Supreme Court in ***Dhananjay @ Dhananjay Kumar Singh (supra)*** and ***Romesh Chandra (supra)***. Suffice it to state that the contention that the gravamen of the allegation is in the nature of intimidation and not extortion, is not insubstantial.

15. The petitioner is present in Court and is identified by her counsel. Respondent no. 2 is also present in Court and is identified by the Investigating Officer.

16. Both the parties state that they have resolved all their disputes and have no grievance against each other. Respondent no.2 states that he does not wish to pursue the FIR in question and joins the petitioner in praying that the same be quashed.

17. Given the peculiar facts of this case, this Court considers it apposite to allow the present petition.

18. Accordingly, FIR No. 53/2019 under Sections 385/389 of the IPC registered with P.S. Amar Colony and all proceedings emanating therefrom, are quashed.

19. The parties shall sign this order as an acknowledgement of the statements recorded herein.

VIBHU BAKHRU, J

OCTOBER 30, 2019

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