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

Date of decision: 12.12.2019

+ CRL.M.C. 3689/2019 & M.A. 32326/2019

HARI SHARAN

..... Petitioner

Through Mr.Harsh Panwar, Adv.

versus

STATE & ORS

..... Respondents

Through Mr. Izhar Ahmad, APP for State.
R-2 & 3 in person.
W/SI Anjana

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby quashing FIR No.321/2017 dated 01.06.2017, registered at Police Station – Kapashera and all other proceedings emanating therefrom.
2. Notice issued.
3. Notice is accepted by learned APP for the State and respondent nos.2 & 3.
4. With the consent of the counsel for the parties, the present petition is taken up for final disposal.

5. The present petition is filed on the ground that the parties have settled their disputes and the respondent Nos. 2 and 3 have no objection if the present petition is allowed.

6. Respondent No.2 & 3 are personally present in Court and they have been identified by W/SI Anjana/IO and submit that matter has been settled and they do not wish to prosecute the matter any further.

7. Learned APP for the State has opposed the present petition and submits that at the time of alleged offence, the prosecutrix was a minor and thereafter she got married to the petitioner, however, the present case is under section 366/376(2)/376(3) and section 6 of the POCSO Act, therefore, the present petition may not be allowed.

8. It is important to note that PW-1 prosecutrix/respondent no.3 deposed before the Trial Court on 26.09.2019 that she was having friendship with Hari Sharan @ Golu (petitioner herein). The atmosphere was not cordial at her house, as her family members used to quarrel with each other. Even her studies were dropped for the same reason. Feeling frustrated with the atmosphere, she left her home on 31.07.2017. She called petitioner at the Railway Station and asked him to accompany her. Initially he refused but on her insistence, he agreed to take her. Firstly, they went to Jhansi and got

married in a temple. Later, they visited the local Tehsil for the purpose of their marriage which was duly solemnised last year at Arya Samaj Mandir, Ghaziabad. Moreover, due to physical relations with the petitioner, she got pregnant and delivered a male child on 17.01.2019.

9. She further stated that presently, she is happily living with her in-laws at her matrimonial home.

10. It is not in dispute that heinous and serious offences such as murder, rape, NDPS and dacoity etc. cannot be quashed despite the fact that the victim or the family of the victim have settled the dispute.

11. It is also not in dispute that such offences are, truly speaking, not private in nature but have a serious impact upon society. But at the same time, quashing of the FIR, in such cases the Court has to see whether actually crime has taken place or due to some other malafide purpose or intention, the complainant has been made which subsequently, culminated into an FIR. If court comes to the conclusion, as in the present petition, that in fact the rape has not been committed by the accused in the case, in my considered opinion, there is no bar to quash the FIR even in case of rape or other heinous offences. Similar view has been taken by this Court in Danish Ali vs. State & Anr. in CrI.M.C.1727/2019 decided on 26.11.2019.

12. But the facts in the present case are different and as per the deposition of the prosecutrix/respondent no.3 before the Trial Court, she herself sought help from the petitioner and thereafter owing to their wish, the petitioner and respondent no.3 got married.

13. The allegations made in the complaint which culminated into the FIR in question may be for the reason, that the parents of respondent no. 3 did not agree to their marriage at that point of time, because she left her parental house and went to Jhansi and got married to the petitioner. But the fact remains that in the present case the offence of rape has not been committed. Had rape been committed the directions issued by the Hon'ble Supreme Court in ***ParbatBhai Aahir and Ors. Vs. State of Gujrat and Ors. AIR 2017 SC 4843*** whereby it was observed that the FIR should not be quashed in case of rape as it is an heinous offence, would come in the way. However, in the present case, marriage has already taken place and there is a male child born out of the said wedlock and if the FIR is not quashed in the present case, it will cause grave injustice to the petitioner and the prosecutrix/respondent no.3 and their families. Even as per the deposition of the prosecutrix, the petitioner is bound to be acquitted by the Trial Court. Therefore, there is no reason to direct the petitioner to face the trial and

await the result of the trial.

14. Taking into account the aforesaid facts, this Court is inclined to quash the concerned FIR as no useful purpose would be served in prosecuting the petitioner any further.

15. For the reasons afore-recorded, the FIR No.321/2017 dated 01.06.2017, registered at Police Station – Kapashera and consequent proceedings therefrom are quashed.

16. The petition is allowed and disposed of accordingly.

17. Order *Dasti*.

18. Since the FIR and emanating proceedings thereto have been quashed against petitioner, the Jail authorities are directed to release the petitioner forthwith.

19. Copy of this order be sent to the Jail Superintendent for compliance.

20. Copy of this order be given dasti under the signatures of Court Master.

21. Pending application stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 12, 2019
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