

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

+ **CrI. M.C. 5734/2019 & CrI. M.A. 40028/2019**

Reserved on: 26.11.2019

Pronounced on: 21.01.2020

JOSEPH FERNANDIS

..... Petitioner

Through: **Mr. Simranjeet Singh, Adv.**
versus

STATE & ORS.

..... Respondent

Through: **Ms. Rajni Gupta, APP for the State
with SI Pinki, P.S.Hauz Khas.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J.

1. Petitioner, by virtue of this petition, is seeking quashing of FIR No. 278/2018 under Section 363 IPC, registered at P.S. Hauz Khas.
2. In brief, the FIR was registered on the statement of the complainant/respondent no.2, who had stated that his daughter was a student of 11th Class studying in Rajkiya Sarvodaya School, Shahpurjat, New Delhi. On 18.10.2018 at about 6 am she left the house and she had not returned. Respondent no.2 laid suspicion on the petitioner that he might have kidnapped his daughter. The FIR hereinabove was got recorded and investigation was taken up.
3. On 22.10.2018, the petitioner along with the victim came to the police station and her statement under Section 161 Cr.P.C was recorded, wherein she had stated that she left her house on her own free will as she had some heated arguments exchanged with her mother. She had further stated that she

called the petitioner and then they went to Ludhiana, Punjab as she had friendly relations with the petitioner. She further stated in her statement that petitioner had not done anything wrong with her and thereafter her statement under Section 164 Cr.P.C was recorded wherein she reiterated what she had stated in the statement under Section 161 Cr.P.C. She has not levelled any allegations against the petitioner with regard to the kidnapping or any wrong having been committed with her. The victim as per the status report was 16 years of age on the date of incident.

4. The Hon'ble Supreme Court in the case of *Parbatbhai Aahir & Ors. Vs. State of Gujarat & Anr. (Criminal Appeal No. 1723 of 2017*, after discussing various precedents on the subject summarized, the following broad principles in relation to Section 482 for quashing FIR :-

“(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide

ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim has settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

5. After giving due consideration to all the aspects of the matter, this Court is of the opinion that this petition deserves to be allowed. The victim in this case is more than 16 years of age and she has made the statement that she went with the petitioner with her consent and her statement was not under any force, coercion or undue influence. Victim has willingly accompanied the petitioner and the law did not cause upon the petitioner the duty of taking victim back to her father’s house or even of telling her not to accompany him. Victim was not a child of tender years who was unable to think for herself but was on the verge of attaining majority and was capable of knowing what was good or what was bad for her.

6. In view of the facts and circumstances of the case, no useful purpose will be served by keeping the case pending and it will be nothing but abuse of the process of law. Accordingly, this petition is allowed and FIR No. 278/2018 under Section 363 IPC, registered at P.S. Hauz Khas, and the proceedings emanating therefrom are hereby stand quashed. The Crl. M.A. 40028/2019 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

JANUARY 21, 2020/ib