

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 15.01.2021****Order delivered on 03.02.2021****Writ Petition (Cr.) No.10 of 2021**

Monika Sarthi, Daughter of Shri Ramesh Sarthi,
aged 22 years, resident of Gram Nardaha, P.S.
Vidhansabha Road, Tehsil Arang and District
Raipur (CG)

---Petitioner***Versus***

1. State of CG, through Police Station Vidhan Sabha Raipur (CG)
2. Toman Sahu, Son of Ramdayal Sahu, aged 21 years, resident Semariya, Post Office Nardaha, P.S. Vidhan Sabha, Tehsil Arang and District Raipur (CG)

---Respondents

For Petitioner	: Mr.B.P.Sharma and Mr.Manay Nath Thakur, Advocates
For Respondent No.1/State:	Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. By way of this writ petition, the petitioner herein (complainant) seeks quashment of registration of FIR and consequent charge-sheet No.226/2020 dated 12.11.2020 filed against respondent No.2 on her complaint for offence punishable under Section 376(2)(n) of the IPC.
2. The relevant facts which are necessary for adjudication of the matter are as under:-
 - 2.1 That, the petitioner and respondent No.2 were in love affairs since 2018 and out of that, they

were sexual and physical relationship since then, but on account of some misunderstanding between the petitioner and respondent No.2, she (petitioner) has lodged the report against respondent No.2 being Crime No.277/2020 at Police Station-Vidhansabha and pursuant to which, FIR has been registered for the aforesaid offence and respondent No.2 has been charge-sheeted. It has been further stated by the petitioner that on account of her anger, respondent No.2 is suffering harassment as he was arrested and when she realized her mistake, on legal advise she filed an affidavit to the police authorities, and as such, now they are in good terms and having love-affairs, therefore, on the basis of affidavit (Ex.P-3), FIR registered against respondent No.2 and consequent proceeding be quashed.

3. Mr.B.P.Sharma, learned counsel for the petitioner, would submit that the petitioner has realized her mistake as they were in love-affairs and out of her anger and misunderstanding, FIR came to be lodged and now she has realized her mistake and therefore, in the light of judgments of the Supreme Court in the matter of Maheshwar

Tigga v. State of Jharkhand¹ (Para-17), Narinder Singh & Others v. State of Punjab & another² (Paras-22, 23 and 27) and Pramod Suryabhan Pawar v. State of Maharashtra & another³ (para-12), FIR and consequent proceeding of Criminal Case No.4985/20 pending before the Judicial Magistrate First Class, Raipur deserve to be quashed.

4. I have heard Mr.B.P.Sharma, learned counsel for the petitioner, at length on the question of admission and grant of interim relief.
5. The petitioner is complainant/victim and at her instance, FIR has been lodged against respondent No.2 herein and pursuant to which, offence under Section 376(2)(n) of the IPC has been registered against respondent No.2/accused and ultimately, the jurisdictional police has also filed charge-sheet against respondent No.2 before the jurisdictional criminal Court for the aforesaid offence, which is pending consideration. It is the case of the petitioner that she has entered into compromise with respondent No.2 and affidavit has also been executed to prove the fact of compromise having been entered with respondent and accused, as FIR has been lodged on

1 (2020) 10 SCC 108

2 (2014) 6 SCC 466

3 (2019) 9 SCC 608

account of misunderstanding, therefore, continuance of criminal proceedings would amount to violation of her fundamental right.

6. The question for consideration is whether only the basis of compromise, FIR and consequent criminal proceedings for offence under Section 376(2)(n) of the IPC can be quashed.
7. The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and minimum punishment for offence under Section 376 of the IPC. To view such an offence once it is proved, lightly, is itself an affront to society. (See State of M.P. v. Bala alias Balaram⁴).
8. The question as to whether the proceeding initiated for offence under Section 376 of the IPC can be quashed on the basis of settlement between the parties is no longer res-integra and has been considered by their Lordships of the Supreme Court in umpteen number of judgments and few of them may be noticed herein pertinently.
9. In the matter of Gian Singh v. State of Punjab and another⁵ their Lordships of the Supreme Court

4 (2005) 8 SCC 1

5 (2012) 10 SCC 303

have clearly held that heinous and serious offences like murder, rape and dacoity shall not be quashed on the basis of settlement as they have serious impact of the society and held as under:-

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on

different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

10. In the matter of Narinder Singh (supra), their Lordships of the Supreme Court authoritatively laid down the guidelines for quashment of the proceedings on the basis of settlement between the parties. Detailed guidelines have been laid down in para-29 (for High Courts) to form a view under what circumstances settlement arrived at

between the parties should be accepted and quashed the proceedings and where it should be refrained from doing so. Their Lordships clearly held that such power is not to be exercised in those prosecution which involves serious and heinous offences like murder, rape and dacoity etc. It was observed as under:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.3 Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to

quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

11. Similarly, in the matter of **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another**⁶ their Lordships of the Supreme Court laid down the guiding principles which should be considered in determining whether to carry out such quashment

6 (2017) 9 SCC 641

or not. It has been summarized as under:-

"16.2 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.

16.5 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.

16.6 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 have 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."

12. Undoubtedly, the offence under Section 376 of the IPC would fall under the category of serious and heinous offences and therefore, are generally treated as crime against society and not against

an individual one.

13. In the matter of Shimbhu and another v. State of Haryana⁷ where the accused has committed gangrape on the prosecutrix by confining her in their shop for two days he was convicted by the trial Court and his appeal was also dismissed by the High Court in confirming the order of conviction and sentence and the settlement has arrived at between the accused and victim and they prayed for sentence to be reduced to the period already undergone, rejecting the plea of accused their Lordships of the Supreme Court observed as under:-

"19. Thus, the law on the issue can be summarized to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or the victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

20. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since

7 (2014) 13 SCC 318

the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) of IPC."

14. Similarly, in the matter of State of Madhya Pradesh v. Madanlal⁸ it was held by their Lordships of the Supreme Court as under:-

"16. Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable.

18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the

richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.

19. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the *elan vital*, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in *Shyam Narain v. State (NCT of Delhi)*⁹ that:-

"Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. 'physical morality'. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about

social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her [pic]chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

15. In view of above-stated legal position, offence under Section 376 of the IPC being a sexual offence would fall in the category of heinous and serious offences and therefore, are to be treated against the society and not against an individual one and therefore, criminal proceedings for offence under Section 376 of the IPC which have a serious impact on the society cannot be quashed in exercise of jurisdiction under Article 226 of the Constitution of India on the ground that parties have managed and staying together.
16. The judgments cited by Mr.Sharma in support of his argument is totally distinguishable. In **Maheshwar Tigga** (supra) the Supreme Court has referred its earlier two judgments in the matters of **Dr.Dhruvaram Murlidhar Sonar v. State of Maharashtra and Ors.**¹⁰ and **Pramod Suryabhan Pawar** (supra) and held that in those cases marriage could not fructify because the parties belonged to different castes and communities, quashed the

10 (2019) 18 SCC 191

proceedings, as such, those cases are clearly distinguishable.

17. Accordingly, the writ petition deserves to be and is hereby dismissed in *limine* without notice to other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-