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

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Date of decision: 10.03.2021

+ **CRL.M.C. 404/2021**

NASIR KHAN AND ANOTHER Petitioners

Through: Mr. Saurabh Verma, Advocate

Versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr.G.M.Farooqui, Additional Public
Prosecutor for respondent No.1/ State
with SI Nitin
Respondent No.2/complainant in
person

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

Crl.M.A. 3849/2021 (for early hearing)

1. By this application, petitioners are seeking preponement of the date of hearing.
2. Notice issued.
3. Mr.G.M.Farooqui, learned Additional Public Prosecutor for State, accepts notice.
4. For the reasons stated in the application, it is allowed and with the consent of counsel for the parties, petition is taken up for final hearing today itself.

5. The application is disposed of.

CRL.M.C. 404/2021

6. Petitioners are seeking quashing of FIR No. 273/2018, under Sections 323/376/328/34 IPC and Section 6 of Protection of Children from Sexual Offences Act, registered at police station Farsh Bazar, Delhi.

7. Learned counsel for petitioner submits that the marriage between petitioner and respondent No.2/complainant was solemnized in 2017 as per Muslim rites and due to some differences, the FIR in question was got registered. However, with the intervention of elders in the family, the dispute has been resolved and petitioner No.1/husband and respondent No.2/wife are happily living together since 2018.

8. On the last date of hearing, this court was informed that respondent No.2 is on family way and is expected to deliver child in February, 2021.

9. Notice issued.

10. Mr.G.M.Farooqui, learned Additional Public Prosecutor for State, accepts notice and submits that today respondent No.2, who is the complainant of FIR in question, along with the newly born child of the parties, is present through video conferencing and she has been duly identified by the Investigating Officer of this case.

11. Learned Additional Public Prosecutor for State, on instruction from

Investigating Officer of this case, further submits that factum of marriage of petitioner No.1 with respondent No.2/complainant and of their happily living together as well as birth of their child, stands verified.

12. Respondent No.2, who is present through video conferencing, submits that she is happily living with petitioner No.1 husband and has no grievance against the other petitioner also and so, to enable her to lead a happy married life, the proceedings arising out of FIR be brought to an end.

13. In a somewhat similar circumstances, a Bench of Punjab and Haryana High Court in ***CRM-M No.47266 of 2019, Pankaj @ Sikandar Kumar Vs. State of U.T., Chandigarh and another, decided on 05.03.2020***, while quashing the proceedings for the offences under Section 376 IPC, has observed as under:-

“5. In normal circumstances, the Court would not entertain a matter when the non compoundable offences are heinous in nature and against the public. In the instant case, the offence, complained of is under Section 376 IPC, which is an offence of grave nature. In the eyes of law, the offence of rape is serious and non-compoundable and the Courts should not in ordinary circumstances interfere and quash the FIR that has been registered. However, there are always exceptions to the normal rules and certain categories of cases, which deserve consideration specially when it is a

case of love affair between teenagers and due to fear of the society and pressure from the community one party alleges rape, cases where the accused and the victim are well known to each other and allegation of rape is levelled only because the accused refused to marry, as well as the age, educational maturity and the mental capacity, consequences of the same ought to be kept in mind when inclined to interfere.”

14. Although, as per the directions of the Hon'ble Supreme Court in ***Parbat Bhai Aahir and Ors. vs. State of Gujrat & Ors. (AIR 2017 SC 4843)***, the FIR should not be quashed in case of rape as it is a heinous offence, but when complainant/prosecutrix herself takes the initiative and states that she made the complaint due to some misunderstanding and now wants to give quietus to the misunderstanding which arose between her and the petitioners, in my considered opinion, in such cases, there will be no purpose in continuing with the trial. Ultimately, if such direction is issued, the result will be of acquittal in favour of the accused, but substantial public time shall be wasted. A similar view was taken by this court in the case of ***Danish Ali v. State and Anr. in Crl. M.C. 1727/2019.***

15. Taking into account the aforesaid facts and the fact that the petitioner No.1 and prosecutrix/respondent No.2 have already married and are blessed

with a child, this Court is inclined to quash the present FIR as no useful purpose would be served in prosecuting petitioners any further.

16. For the reasons afore-recorded, FIR No. 273/2018, under Sections 323/376/328/34 IPC and Section 6 of Protection of Children from Sexual Offences Act, registered at police station Farsh Bazar, Delhi and all other proceedings arising therefrom are hereby quashed.

17. The petition and pending applications are accordingly disposed of.

MARCH 10, 2021

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SURESH KUMAR KAIT, J

