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

+ **CRL.M.C. 1015/2021**

Date of decision: 25th March, 2021

IN THE MATTER OF:

VIKASH KUMAR

..... Petitioner

Through

Mr. Raja Ram Sharma, Advocate

versus

THE STATE AND ANR

..... Respondents

Through

Ms. Kusum Dhalla, APP for the
State.

Complainant/respondent No.2 in
person.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CrI.M.A.51050/2021(exemption)

Allowed, subject to all just exceptions.

CRL.M.C.1015/2021

1. This petition filed under Section 482 Cr.P.C. is for quashing FIR No.185/2020 registered in Police Station Prasad Nagar for offences punishable under Sections 328, 376 and 506 IPC on the ground that the prosecutrix and the petitioners have compromised the matter.

2. The facts as stated in the petition are that the prosecutrix and the petitioner were having friendly relations as they were working in the same Factory and living in Delhi and the prosecutrix was a widow lady as

her first husband had already expired. It is alleged that the prosecutrix and the petitioner become friends and fell in love with each other and both started residing together and intend to marry. It is alleged that the petitioner had physical relationship with the prosecutrix. It is alleged that for two years both were living in same house like husband and wife. It is alleged that the petitioner went to his native village and did not contact the prosecutrix, which created a doubt in the mind of the prosecutrix that the petitioner has committed fraud on her, as a result of which, she lodged a complaint with Police Station Prasad Nagar. The instant FIR was registered on 03.07.2020. It is stated that when the petitioner came back to Delhi and came to know about the registration of the FIR. He told all the facts to the prosecutrix and the reasons he could not contact her. The prosecutrix and the petitioner have resolved their all disputes and they solemnized their marriage on 01.10.2020, according to Hindu Rites and ceremonies. The petitioner prays for quashing of the FIR on the ground that the prosecutrix and the petitioner have got married.

3. It is well settled that the power under Section 482 Cr.PC is to be distinguished from the powers which lies with the Court to compound the offences compoundable under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has the power to quash even in those offences which are not compoundable, where the parties have settled the matter between themselves, but the power has to be exercised fairly and with caution. Offence of rape is a heinous crime punishable under Section 376 IPC.

4. The Supreme Court in Gian Singh v. State of Punjab reported as **(2012) 10 SCC 303** observed 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 the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation

of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis added)

5. After relying on Gian Singh (supra), the Supreme Court in Narinder Singh & Ors. v. State of Punjab & Anr. reported as **(2014) 6 SCC 466**, has observed as under:

"29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

(emphasis added)

6. In State of M.P. v. Laxmi Narayan & Ors. reported as **(2019) 5 SCC 688**, the Supreme Court has observed as under :

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst

themselves;

15.2. Such power is not to be exercised in those prosecutions which involved 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;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;"

(emphasis added)

7. A perusal of the above mentioned judgments show that wherein the allegation of rape has been made, it cannot be quashed only because the prosecutrix and the accused have entered into a compromise and the victim's family and the offender have settled the dispute because these offences are not private in nature and has a serious impact on the society.

8. In the present case, the allegation in the FIR is that the prosecutrix and the accused were working in the same place and have become friends. They fell in love and were living together for two years. The accused went to his native place and the FIR was lodged alleging rape. The prosecutrix has married the accused with whom she was living for two years. The prosecutrix in her affidavit has affirmed the statements made in the petition under Section 482 Cr.P.C. that the parties got married on 01.10.2020 according to Hindu Rites and Ceremonies. Their families have accepted the marriage and they have a child from the marriage. In the facts of the case, continuation of the proceedings would cause immense harm to the prosecutrix and the small child. This Court is aware that

offences like rape cannot be quashed by exercising jurisdiction under Section 482 Cr.P.C. if a compromise has been reached, but, at the same time, this Court cannot ignore and overlook the welfare of the small child and the future of the prosecutrix.

9. Similar views have been taken by the High Court of Kerala in Ashiq N.A. v. State of Kerala and Anr., **2019 SCC Online Ker 1731** and Freddy @ Antony Francis & Ors. v. State of Kerala and Ors., [Crl.M.C.No.723/2017] decided on 02.02.2017 and by the High Court of Uttarakhand in Akash Gupta v. State of Uttarakhand and Anr., [Criminal Misc. Application No.502/2018) decided on 27.10.2018.

10. Mr. Raja Ram Sharma, learned counsel appearing for the petitioner has placed reliance on an order dated 07.09.2020 passed by this Court in Bitu Yadav @ Vikas Yadav v. State(NCT of Delhi) & Anr., [CRL.M.C.1761/2020], wherein this Court has quashed the FIR where the prosecutrix and the accused were married. Paras 17, 18 and 19 of the said order, read as under:

“17. In view of the submissions made by the respondent No.2 before this Court, the respondent No.2 is liable to be prosecuted. However, keeping in view the fact that the petitioner and respondent No.2 are married and living happy married life, I hereby refrain from taking any legal action against the respondent No.2. A similar view was taken by this court in the case of Danish Ali v. State and Anr. in Crl.M.C.1727/2019.

18. Taking into account the aforesaid facts and the fact that the petitioner and respondent No.2 are in love affair since 2013 and they are married, this Court is inclined to quash FIR as no useful purpose would be served in prosecuting petitioner any further.

19. For the reasons afore-recorded, FIR No.384/2020 dated 31.07.2020, for the offence punishable under Sections 376/506 IPC, registered at PS-Dwarka North, Delhi and consequent proceedings emanating therefrom are quashed.”
(emphasis added)

11. The instant FIR is being quashed only keeping in view the facts and circumstances of this case and this order cannot be taken as a precedent on the power of High Court to exercise its jurisdiction under Section 482 Cr.P.C. to quash an offence of rape on the ground that the victim and the accused have entered into a compromise.

12. For the reasons stated hereinabove, the FIR No.185/2020 registered in Police Station Prasad Nagar for offences punishable under Sections 328, 376 and 506 IPC and the proceedings emanating therefrom are hereby quashed.

13. The petition is disposed of in above terms.

SUBRAMONIUM PRASAD, J.

MARCH 25, 2021

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