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

% ***Date of decision: 28.04.2021***

+ **CRL.M.C. 1034/2021 & CrI.M.As. 5259-60/2021**

MR. VIVEK KUMAR YADAV

..... Petitioner

Through: Ms. Amrita Mishra & Ms.Ritu Yadav,
Advocates

Versus

STATE & ANR.

..... Respondents

Through: Mr. G.M. Farooqui, Additional Public
Prosecutor for respondent No.1/State
with SI Faizan Ghani
Respondent No.2 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.

1. The present petition has been preferred by the petitioner seeking quashing of FIR No. 150/2018, registered at police station Shakarpur, Delhi for the offences under Sections 376(2) (n)/323 IPC.

2. Notice issued.

3. Mr. G.M.Farooqui, learned Additional Public Prosecutor for respondent No.1/State accepts notice. Learned Additional Public Prosecutor for State submits that respondent No.2 is present through video conferencing

and she has been identified as the complainant of FIR in question by the Investigating Officer of this case, who is also present through video conferencing.

4. With the consent of both the sides, the present petition has been taken up for hearing and disposal.

5. The crux of the prosecution case, as noted in the charge-sheet filed in this case, is that petitioner and respondent No.2, who is the complainant of FIR in question, studied in same college in Jaipur, Rajasthan and became friends in the year 2013. After some time, their friendship turned into love affair and they entered into physical relationship many times till the year 2017. As per the complainant, petitioner made physical relations with her on the pretext of marrying her, however, after some time he refused to marry her with the lame excuse that his family was not ready for their marriage. Aggrieved with petitioner's refusal to marry her, respondent No.2/complainant filed a complaint against him, which culminated in the FIR in question.

6. The present petition has been filed by the petitioner on the ground that with the intervention of respectable members of the society, the subject matter of this FIR stands amicably resolved with respondent

No.2/complainant in terms of Deed of Settlement dated 12.02.2021.

7. Learned counsel for petitioner submits that both the sides have moved on in their lives and in fact, respondent No.2 has recently got engaged to some other person and is likely to get married soon. It is submitted that both the sides have decided to give quietus to their *inter se* dispute and therefore, in the interest of justice, the present petition be allowed.

8. Respondent No.2, who is present through video conferencing, has affirmed the factum of having resolved the subject matter of this FIR with petitioner in terms of Deed of Settlement dated 12.02.2021 as also contents of her affidavit dated 20.02.2021 filed in support of this petition.

9. Recently, the Hon'ble Supreme Court in Crl. Appeal 233/2021 [arising out of SLP (Crl. No. 11218 of 2019)], titled as ***Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr.*** against an order of dismissal of application, where accused had refused to marry the complainant despite having been in physical relationship and promised to marry her, while referring to the principles enunciated in ***Pramod Suryabhan Pawar Vs. State of Maharashtra (2019) 9 SCC 608*** observed as under:-

“9. In ***Pramod Suryabhan Pawar*** (*supra*), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

“Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it...”

10. The Hon’ble Supreme Court in **Sonu @ Subhash Kumar (Supra)**

further held as under:-

“11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.”

11. 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.”

12. 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 wants to give quietus to the dispute, in my considered opinion, in such cases, there will be no purpose in continuing with the trial.

13. Taking into account the aforesaid facts and in view of ratio laid down

by the Hon'ble Supreme Court in *Sonu @ Subhash Kumar (Supra)*, this Court is inclined to quash the present FIR as no useful purpose would be served in prosecuting petitioner further.

14. For the reasons afore-recorded, FIR No. 150/2018, registered at police station Shakarpur, Delhi for the offences under Sections 376(2) (n)/323 IPC and all other proceedings arising therefrom, are hereby quashed.

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

APRIL 28, 2021

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SURESH KUMAR KAIT, J

