

\$~34

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

%

*Date of decision: 25.05.2021*

+ **W.P.(CRL) 1021/2021 & CRL.M.As. 8054-55/2021**

SURG LT CDR AASHISH CHANDRA TIWARY .....Petitioner

Through: Mr. Rajesh Ranjan, Advocate

Versus

STATE GOVT OF NCT OF DELHI AND ANR. ... Respondents

Through: Ms. Richa Kapoor, Additional  
Standing Counsel (Crl.) &  
Ms. Shivani Sharma, Advocate for  
respondent No.1/State  
Ms. Neha Rajpal, Advocate with  
respondent No.2 in person.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**JUDGMENT (oral)**

The hearing has been conducted through video conferencing.

1. Vide present petition, petitioner is seeking quashing of FIR No. 95/2021, registered at police station Naraina, Delhi for the offence under Sections 376 (2) (n) IPC.

2. Notice issued.
3. Ms. Richa Kapoor, learned Additional Standing Counsel for respondent No.1/State accepts notice.
4. Ms. Neha Rajpal, Advocate for respondent No.2, accepts notice and submits that respondent No.2, who is the complainant of FIR in question, is present through video conferencing.
5. The Investigating Officer of this case is present through video conferencing and she has identified the complainant who is also present through video conferencing.
6. With the consent of both the sides, the present petition has been taken up for hearing and disposal.
7. Learned counsel for petitioner submits that the FIR in question was registered at the instance of respondent No.2 against the petitioner due to some misunderstanding, which stood cleared and after resolving all the disputes, petitioner and respondent No.2 have solemnized marriage and are now living happily together as husband and wife.
8. On the other hand, learned Additional Standing Counsel has opposed the present petition while submitting that the allegations levelled against the

petitioner in the FIR in question are serious in nature and he does not deserve any relief from this Court.

9. The case of the prosecution, as noted in the FIR in question, is that respondent No.2/complainant had met the petitioner on a matrimonial site and developed friendly relations with him, which turned into a love affair. It is alleged in the FIR that on the pretext of entering into marriage, petitioner developed physical relations with respondent No.2/complainant, which continued on many occasions. However, after some time petitioner started ignoring her and she got to know that petitioner was in relationship with some other girl and had deceived her. Aggrieved by the conduct of petitioner, respondent No.2/complainant filed a complaint against him, which culminated in the FIR in question.

10. At this stage, learned counsel for petitioner submits that petitioner and respondent No.2 after clearing all the misunderstandings have married each other and in the interest of justice, the present petition be allowed.

11. Respondent No.2, who is present through video conferencing, has affirmed the factum of her marriage with petitioner. She has also affirmed contents of her affidavit dated 13.05.2021 filed in support of this petition and

she submits that she wants to give a quietus to the dispute with petitioner to live a happy life ahead.

12. Recently, the Hon'ble Supreme Court in ***Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr.*** 2021 SCC OnLine SC 181 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, had referred to the principles annunciated in ***Pramod Suryabhan Pawar Vs. State of Maharashtra (2019) 9 SCC 608*** and 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...”*

13. 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.”*

14. In 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.”*

15. 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, no purpose would be served in continuing with the trial.

16. Taking into account the aforesaid facts and in view of ratio of law 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 any further.

17. For the reasons afore-recorded, FIR No. 95/2021, under Sections 376 (2) (n) IPC, registered at police station Naraina, Delhi and all other proceedings arising therefrom, are hereby quashed.

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

**(SURESH KUMAR KAIT)**  
**JUDGE**

**MAY 25, 2021**

r

