

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

%

Reserved on : 08.11.2021

Pronounced on : 21.12.2021

+ **CRL.M.C. 1540/2020**

RAKESH KUMAR GUPTA AND ORS

..... Petitioners

Through: Mr. N.K Aggarwal, Ms. Sanjana
Antil, Ms. Nupur Sachdeva and Ms.
Yogita Sunaria, Advs.

Versus

THE STATE AND ANR.

.... Respondent

Through: Dr. M.P. Singh, APP for the State.

Ms. Samta Jain, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present petition has been filed under Section 482 read with Section 226 of the Constitution of India for quashing of proceedings

arising out of FIR No. 285/2019 under Sections 376/377 IPC and Section 4 of Dowry Prohibition Act, registered at P.S. Budh Vihar.

2. Briefly stated, the facts of the present case are that on 25.10.2019, the complainant came to the PS and gave a written complaint, wherein she alleged that she uploaded her profile on matrimonial site Jeevansathi.Com, where she came in contact with accused Akash Gupta (petitioner No. 3 herein), who introduced himself as a practicing lawyer having his office at Chamber No 192, Civil Wing, Tis Hazari Court, Delhi.

3. Complainant's family visited the house of accused Akash Gupta (petitioner No. 3 herein) but initially his family members denied for marriage but petitioner No. 3 remained in contact with the complainant and assured her that he will convince his family members for their marriage. After some time, petitioner No. 3 informed the complainant that his family member got agreed for the marriage.

4. Accordingly, complainant's parents again visited the house of petitioner No. 3 and clearly asked petitioner No. 1 and 2 who are parents of petitioner No.3, if, they have any demand, upon which, they denied to have any demand, hence the marriage was fixed. On 04.08.2019, Roka ceremony was performed at the house of petitioner No.3, wherein complainant's father spent Rs 85,970/-. On 28.08.2019, ring ceremony was also performed at Hotel Seven Seas, Lawrence

Road, Britania Chowk, Delhi, wherein complainant's father again spent Rs 6,69,200/-. After ring ceremony, petitioner No. 3 used to meet complainant at her house and restaurants. Complainant further alleged that once petitioner No. 3 asked her that it is tough to find a flat on rent being Advocate, hence asked her to find a flat in complainant's name. Complainant relied upon the words of petitioner No. 3 and handed over her ID's and four post dated cheques total amounting of Rs 1.2 lac to the landlord at the instance of petitioner No. 3.

5. It is further alleged by the complainant that by the passage of time petitioner No. 3 used to come to her house and started touching her. Whenever complainant refused, he assured her that they are soon getting married and on the pretext of marriage, accused/petitioner No. 3 committed unnatural and natural sex with the complainant without her consent. On 23.09.2019, petitioner No. 3 again established physical relations with the complainant against her will after giving her false promise of marriage. Complainant further alleged that on 31.08.2019, petitioner No. 3 took her to Dehradoon in his car where he booked a hotel and stayed together and during the stay petitioner No. 3 committed unnatural and natural sex with the complainant on pretext of marriage.

6. It is further alleged that on 05.10.2019, petitioner No. 3 asked the complainant to call her parents as his parents wants to meet them.

Accordingly, on 14.10.2019, parents of complainant visited the house of petitioner No. 3, where his parents Sh. Rakesh Gupta and Radhika Gupta (petitioner No. 1 and 2 herein) and petitioner No. 3 demanded Rs 25 Lakh as dowry from the parents of complainant. Parents of complainant showed their inability to arrange such a huge amount. Petitioner No. 1 and 2 threatened the complainant and her family members that if they will not fulfill their demands, they will not marry their son with the complainant. Complainant also tried to convince petitioner No. 3, but he said that he used to make physical relations with the girls and after that make such demand.

7. Complainant was medically examined vide MLC No 1899/19 and accordingly on the basis of the complaint given by the complainant the present FIR No. 285/19 U/s 376/377 IPC and Section 4 of Dowry Prohibition Act was registered at police station Budh Vihar and the investigation went underway.

8. I have heard the Ld. counsel for the petitioners, Ld. counsel for the complainant (respondent No. 2), Ld. APP for the State., perused the Status Report and the records of this case.

9. It is submitted by the Ld. counsel for the petitioners as well as counsel for the respondent No. 2 that the parties have now amicably settled all their disputes and have entered into an agreement in this regard on 11.12.2019. It is further submitted by the counsels that now

the petitioner No. 3 and respondent No. 2 have married and no useful purpose would be served by continuing with the present case.

10. On the other hand, Ld. APP for the State has argued on the lines of the Status Report and has submitted that the FIR may not be quashed in the instant case as the allegations are grave and serious in nature. It is further submitted by the Ld. APP that the present offence is not to be treated as private dispute between the parties. Rather, it is a crime against the society.

11. In the present case, petitioner No.3 is a practicing advocate who is a member of legal fraternity, so, he has all the more responsibility as far as his conduct is concerned towards an individual and towards the society. Rape not only destroys the personality of the victim but it also scars the mental psyche of the victim which remain embedded on the mind of the victim for years together. The charges of rape are of grave concern and cannot be treated in a casual manner.

12. The issue as to whether the High Courts, while exercising its jurisdiction under Section 482 Cr.P.C, should quash an offence under Section 376 IPC has come for consideration before the Supreme Court in a number of cases. The Supreme Court has, time and again, directed that the High Court should not exercise its jurisdiction under Section 482 Cr.P.C to quash an offence of rape on the ground that the parties have entered into a compromise.

13. In **Gian Singh v. State of Punjab & Anr., (2012) 10 SCC 303,** the Supreme Court has observed as under:

"61. The position that emerges from the above discussion can be summarized 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..."
(emphasis supplied)

14. In **Shimbu v. State of Haryana**, (2014) 13 SCC 318, the Supreme Court has observed as under:

"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 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) IPC."

(emphasis supplied)

15. In **State of M.P. v. Madanlal**, (2015) 7 SCC 681, the Supreme Court has observed as under:

"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 to 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 the 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.” (emphasis supplied)

16. In State of M.P. v. Laxmi Narayan & Ors., (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;"

(emphasis supplied)

17. In **Narinder Singh & Ors. v. State of Punjab & Anr., (2014) 6 SCC 466**, the Supreme Court 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."

(emphasis supplied)

18. No doubt, in the present case, both the parties have executed an M.O.U. dated 11.12.2019. But by simply entering into a compromise, charges cannot be said to have been mitigated or that the allegations leveled by the respondent No. 2 regarding the alleged offence lost its gravity by any means. Act of rape is not an act against individual but this is an offence against the society. As per the Status Report filed by the State and argued by the Ld. APP, the statement of the respondent No. 2 (complainant) was recorded U/s 164 Cr.P.C in which respondent No. 2 has corroborated the allegations leveled by her in the FIR.

19. In view of the settled position enumerated in ***Gian Singh's case*** (**supra**) and other cases referred to hereinabove, the criminal

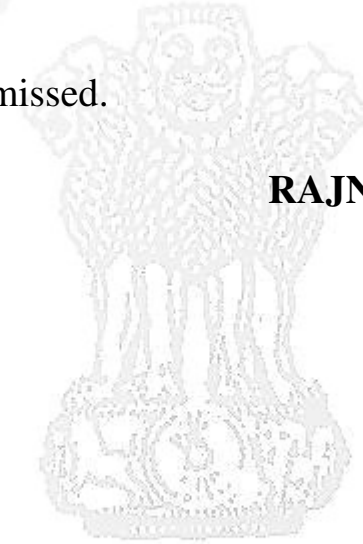
proceedings emanating from FIR No. 285/2019 registered at Police Station Budh Vihar with the allegations of rape cannot be quashed in the facts and circumstances of this case despite their being a settlement between the complainant (Respondent No. 2) and the petitioners as the offence punishable U/s 376 IPC being a serious offence, FIR in question cannot be quashed on the basis of compromise between the parties, in exercise of powers vested in this Court under Section 482 Cr.P.C.

20. The petition is dismissed.

RAJNISH BHATNAGAR, J

DECEMBER 21, 2021

Sumant



न्यायमेव जयते