

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

+ **CRL.M.C. 1524/2021**

Date of decision: AUGUST 16th, 2021

IN THE MATTER OF:

VIMLESH AGNIHOTRI & ORS

..... Petitioners

Through Mr. Sonu Kumar, Advocate

versus

STATE & ANR

..... Respondents

Through Ms. Kusum Dhalla, APP for the State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 482 Cr.P.C has been filed for quashing FIR No.343/2019, dated 22.07.2019, registered at Police Station Aman Vihar for offences under Section 376 IPC, on the ground that the petitioners and the respondent No.2 have entered into a compromise.

2. The respondent No.2 gave a complaint stating as under:

"I state to you that on 05/05/2019 at around 09:30 evening. My doorbell when I open the door, a person was standing on the door, when i asked him who are you then he told he is Vimlesh Agnihotri and asked me, Where is Vimal Ji then I replied he is not at home and you come here after two days because he went to somewhere then the person told me open the door I have to give some papers which to be given to Vimal Ji. As Soon as I open the iron gate the person entered in my house alongwith a girl and a women all the three person entered in the room and the person told his name. Vimlesh pushed me inside the room the women locked the door, Vimlesh Pushed me on the bed and the girl who kept my mouth shut so that I could not make a

noise. After that Vimlesh raped me by force and during this incidence the lady makes a video. Vimlesh threaten me that if you told to anyone about this incident then I will circulate this video on net. After that all persons have gone, if they come in front of me I will recognised all of them. After passing of two days when my husband came back, I could not tell anything due to fear. I become sad then my husband send me to my maternal home for changing of my mind due to changing of place. I came to Aman Vihar Police Station on 21/07/2019 that Vimlesh has raped me and take action against above named persons."

On the said complaint, FIR No.343/2019, dated 22.07.2019, was registered against the petitioners herein at Police Station Aman Vihar for offences under Sections 376 IPC.

3. It is stated by the learned counsel for the petitioner that the present FIR is a counter blast to a complaint filed by the petitioner No.3 against the husband of the respondent No.2, being FIR No.193/2019, dated 26.04.2019, registered at Police Station Aman Vihar, for offence under Section 376 IPC.

4. It is stated that the Police Report in FIR No.343/2019 has been filed in the Court of Metropolitan Magistrate, Rohini District Courts, without the arrest of the petitioners. It is also stated that the petitioner No.3 i.e. the complainant in FIR No.193/2019 and the husband of the respondent No.2 are Advocates and are practising in Delhi.

5. An affidavit has been filed by the respondent No.2 stating that the matter has been compromised. The said affidavit reads as under:

"1. That the deponent is the Respondent No.2 in the above mentioned matter and am well conversant with the facts and circumstances of the case and as such am competent to swear the present affidavit.

2. That the Deponent states that on her complaint F.I.R No. 343/2019 U/s 376 IPC P.S-Aman Vihar was registered against the Petitioners.

3. That deponent states that her husband and the Petitioner No.3 are practising Advocates at Delhi and being a matter relates to Advocate fraternity, the office bearer of the Rohini District Bar Association took cognizance of matter and on their intervention and persuasions the disputes was amicably resolved.

4. That the deponent states that she has no grudge against the petitioners as the dispute was amicably settled among the parties.

5. That the deponent states that she wishes to forget the bitter past. Now onwards there is no ill will of any kind left among the parties and they have resolved all their disputes with one another.

6. That deponent states that she has given her consent to quash the present FIR and proceedings thereto without any pressure, undue influence coercion and pressure from any quarter.

7. That the deponent states that this affidavit is filed bonafide."

6. A perusal of the abovementioned facts would show that the parties have registered cross-cases against each other for offences under Section 376 IPC. It is tragic to note that practising advocates belonging to the legal fraternity are trivialising the offence of rape. Rape is not merely a physical assault; it is often destructive of the whole personality of the victim. The act of rape has the ability to scar the mental psyche of the victim and this trauma can persist for years.

7. In Shyam Narain v. State (NCT of Delhi), (2013) 7 SCC 77, the Supreme Court has observed as under:

" 27. Respect for reputation of women in the society shows the basic civility of a civilised society. No

member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. 'physical morality'. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. It is a matter of grave concern that people are treating these allegations in a very casual manner.

8. 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. Rape is an offence against the society. 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.

9. In Shimbhu 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 pressurised 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 pressurise 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)

10. 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)

11. 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 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..." (emphasis supplied)

12. 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)

13. 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)

14. Quashing FIR for offences like rape on the basis of compromise will encourage accused to put pressure on the victims to agree to a compromise and this will open doors for the accused to get away with a heinous crime which cannot be permitted.

15. In the present case it appears that both sides have resorted to file

complaints of rape without having any sensitivity to the offence of rape. While the repercussions of the offence of rape on the victim have been mentioned above, on the other hand, false allegations of rape have the potential to destroy the life and career of the accused. The accused in a false case of rape loses his honour, cannot face his family and is stigmatized for life. Allegations regarding offences such as one under Section 376 IPC cannot be made at the drop of a hat - in order to settle personal scores.

16. Further, the time spent by the police in investigating false cases hinders them from spending time in investigation of serious offences. As a result, it leads to faulty investigations and the accused end up going scot-free. Valuable judicial time is also spent in hearing cases where false allegations are made and is consequently an abuse of the process of law. Therefore, people who make such false allegations of rape cannot be permitted to go scot-free. This Court is pained to note that there is an alarming increase of false cases of rape and offences under Section 354, 354A, 354B, 354C & 354D only to arm-twist the accused and make them succumb to the demands of the complainant.

17. This Court, at the moment, is not commenting as to whether the present case is a false case or not. However, if it is found that the cases which have been filed by the parties against each other are false and frivolous then action should be taken against the prosecutrix and others who were instrumental in levelling allegations of rape only to settle some personal scores. There is an urgent need to deter such frivolous litigations.

18. False claims and allegations pertaining to cases of molestation and rape need to be dealt with an iron hand due to the serious nature of the offences. Such litigations are instituted by the unscrupulous litigants in the

hope that the other party will capitulate to their demands out of fear or shame. Unless wrongdoers are not made to face the consequences of their actions, it would be difficult to prevent such frivolous litigations. The Courts have to ensure that there is no incentive or motive for frivolous litigations which unnecessarily consumes the Court's otherwise scarce time. This Court is of the opinion that this problem can be solved, or at least minimized, to a certain extent, if exemplary cost is imposed on the litigants for instituting frivolous litigations.

19. In view of the mandate of the Supreme Court that High Courts must not exercise its powers under Section 482 Cr.P.C. for quashing an offence of rape only on the ground that the parties have entered into a compromise, this Court is not inclined to entertain this petition.

20. With these observations the petition is dismissed.

SUBRAMONIUM PRASAD, J.

AUGUST 16, 2021

Rahul