

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

+ **CRL.M.C. 1567/2021**

Date of Decision: 28.09.2021

IN THE MATTER OF:

KAPIL GUPTA

..... Petitioner

Through: Mr. Roshan Sonthalia, Advocate

Versus

STATE OF NCT OF DELHI THROUGH NOMINATED COUNSEL
(CRL.) & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for
State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of FIR No. 569/2020 registered under Section 376 IPC at Police Station Mehrauli, Delhi on the ground that the present FIR came to be registered on account of some misunderstanding and the parties having reached an amicable settlement of their dispute, no fruitful purpose would be served in continuance of the present criminal proceedings.

2. Issue notice.

3. Ms. Meenakshi Dahiya, learned APP for the State, accepts notice.

4. As per the prosecution case, the present FIR came to be registered on 25.08.2020 on the complaint of the prosecutrix, wherein it was stated that she was in the final year of her college and a personal trainer by

profession. In February, 2020 she met with an accident and sustained injuries on her thigh and ankle and was helpless and financially disturbed. The prosecutrix planned to join an MNC for future security and in search of a job got petitioner's number. The prosecutrix texted the petitioner, who replied that he was looking for a hot personal assistant. The petitioner asked the prosecutrix if she was open for a relationship to which she resisted. The petitioner called the prosecutrix and offered wine to which she agreed. Thereafter, the prosecutrix sent him location of her home and the petitioner visited her with a bottle of wine. While talking normally about the profession, the petitioner gave two drinks to the prosecutrix and also passed the bottle of wine to her. When the prosecutrix got drunk, the petitioner started removing her clothes. The petitioner started punching on the prosecutrix's right leg and established physical relations with her without her consent. The prosecutrix raised hue and cry and tried to call the neighbors. The petitioner hit the prosecutrix repeatedly and the prosecutrix even scratched him on his chest. Thereafter, her neighbor *Jasmin* came and witnessed that the petitioner was running away from the house after establishing relations with the prosecutrix. The petitioner asked the prosecutrix for physical relations and she replied in negative, then the petitioner removed her clothes and starting hitting her and committed rape upon her.

5. Mr. Roshan Sonthalia, learned counsel for the petitioner, submits that the petitioner was admitted to bail vide order dated 23.09.2020 passed by this Court and the parties were able to reach an out of the Court settlement. It is stated that there was a mutual attraction between the parties and the prosecutrix wanted to have a long term relationship with the petitioner. However, on coming to know that the petitioner was

in fact married, the present FIR was lodged in the heat of the moment under the influence of liquor. It is also stated that the parties have mutually decided to set the record straight and be friends and the prosecutrix has no objection to the quashing of the FIR.

6. Ms. Meenakshi Dahiya, learned APP for the State, has vehemently opposed the quashing of the FIR on the basis of the aforesaid settlement.

7. It is a settled position of law that the scope of powers conferred to High Courts under Section 482 Cr.P.C. is very wide. The High Court has inherent power to act *ex debito justitiae* to do real and substantive justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court. The Supreme Court in Gian Singh v. State of Punjab and Another reported as (2012) 10 SCC 303, has delineated the scope of powers under Section 482 Cr.P.C. thus:-

“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....”

(emphasis added)

8. The scope of this power has further been extended to cases where offences are non-compoundable and where the offences are

predominantly civil in nature, especially those arising out of commercial transactions or matrimonial relations or family disputes between the parties. In such cases, power under Section 482 Cr.P.C. is ordinarily exercised to put an end to litigation on parties reaching an amicable settlement and with a view to prevent the abuse of process of law and to secure the ends of justice.

9. The moot question that arises for consideration in the present case is whether or not in exercise of powers under Section 482 Cr.P.C. an FIR registered for the offence punishable under Section 376 IPC can be quashed on the basis of a settlement arrived at between the parties?

10. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution. While exercising these powers, the High Courts are bound to evaluate whether the ends of justice would justify their exercise and the same cannot be oblivious to the nature and gravity of the offence alleged to have been committed.

11. Section 482 Cr.P.C. clothes this Court with the power to quash proceedings arising out of an FIR or a complaint, only upon satisfaction of well-established parameters laid down over time. One of these parameters is that where the alleged offences are heinous and serious in nature showing mental depravity, the Court will be well within its rights to refrain from exercising its inherent powers. The view has been given recognition in Gian Singh (Supra), where the Supreme Court made the following key observation:-

“61.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....”

12. In Narinder Singh and Others v. State of Punjab and Another reported as **(2014) 6 SCC 466**, it has been further propounded that when an offence is committed against the society, the Court shall not be persuaded to exercise its power under Section 482 Cr.P.C. on the plea that a settlement has been arrived at between the accused and the victim. It is in the larger public interest to punish such an offender, as the punishment acts as a deterrent for others from committing similar crime.

13. Insofar as Section 376 IPC is concerned, it is well established that the offence punishable thereunder is committed not only qua the victim, but also against the society. In consonance with the view taken in Narinder Singh and Others (Supra), Courts have warned in a plethora of decisions against the consequences of permitting compounding of the offence punishable under Section 376 IPC, including in Shimbhu and Another v. State of Haryana reported as **(2014) 13 SCC 318**, where it was observed as follows:-

“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.”

14. This stance has been reaffirmed by the Supreme Court in State of Madhya Pradesh v. Madanlal reported as **(2015) 7 SCC 681**, wherein the Court observed that the conception of compromise in a case of rape or attempt to rape can be thought of under no circumstances. Relevant excerpt from the decision is reproduced hereunder:-

“18.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.”

15. The above-stated views are also echoed in Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another reported as (2017) 9 SCC 641, and more recently, in State of Madhya Pradesh v. Laxmi Narayan and Others reported as (2019) 5 SCC 688, where it was opined that:-

“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...;

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 added)

16. In the backdrop of this legal position, Courts have refrained from exercising power under Section 482 Cr.P.C. to quash cases in respect of heinous offences, especially those under Section 376 IPC, on the basis that a settlement has been arrived at between the accused and the complainant [Refer: Jignesh Pravinbhai Rathod v. State of Gujarat & 1

reported as **2016 SCC OnLine Guj 5822**; Sanjay and Another v. State of M.P. and Another reported as **2018 SCC OnLine MP 1711**; Yashpal Chaudhrani and Others v. State (Govt. of NCT Delhi) and Another reported as **2019 SCC OnLine Del 8179**; Rajesh Kumar and Others v. State of U.P. and Another reported as **2020 SCC OnLine All 1405**; Monika Sarthi v. State of CG, through Police Station and Another reported as **2021 SCC OnLine Chh 386** and Pawan Gaur v. State (NCT of Delhi) reported as **2021 SCC OnLine Del 2763**].

17. Lately, this Court in Dr. Maheep Kumar Meena v. State (Govt. of NCT of Delhi) and Another reported as **2021 SCC OnLine Del 4500** held that even though both parties have prayed for quashing of the FIR on the basis of an *inter se* settlement, the prayer could not be acceded to.

18. Keeping in view the enunciation of law referred hereinabove, this Court is of the opinion that even though both parties have prayed for quashing of the FIR on the basis of an *inter se* settlement, the prayer cannot be acceded to. Accordingly, no reason for this Court to exercise its inherent jurisdiction under Section 482 Cr.P.C. is made out.

19. In view of the conclusion arrived hereinabove, the present petition is dismissed. It is made clear that the observations made hereinabove are only for the purpose of considering the prayer of quashing on the basis of *inter se* settlement and this Court has not dealt with the merits of the case.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 28, 2021

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