



(VIA VIDEO-CONFERENCING)

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

% Reserved on : 16.11.2021
Pronounced on : 03.01.2022

+ W.P.(CRL.) 1904/2021

SWATANTRA KUMAR JAYSAWAL

..... Petitioner

Through: Mr. Manoj Chaudhary and Mr. Sachin Anand, Adv.

Petitioner in person.

versus

STATE & ANR.

.... Respondents

Through: Mr. Rajesh Mahajan, ASC with Ms. Jyoti Babbar, Adv.

**Mr. Lalit Valecha, Adv. for R-2
R-2 in person.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for quashing and cancelling the FIR



No. 219/2021 under Section 376/323/506 IPC registered at P.S. Patparganj Industrial Area and all the proceedings thereof.

2. Briefly stated, the facts of the case are that on 25.06.2021 an information from PCR vide DD No.54A was received at PS Patparganj Industrial Area, wherein it was reported that Complainant was not telling anything about complaint but asking for urgent police assistance. Accordingly, IO SI Moolchand reached the place of incident i.e. ICD Patparganj Custom office and met the complainant, who told that she had a scuffle with her male friend Swatantra (petitioner herein) and he had tried to assault her. The Complainant was brought to PS Patparganj Industrial Area and further enquiry proceedings were marked to WSI Anjali Rana. Initially, the complainant revealed only about the scuffle and was hesitating in disclosing further facts, but later she disclosed regarding act of sexual assault having been committed upon her by accused Swatantra Jaysawal (petitioner herein) in his ICD Patparganj Office at 03.30 pm on 25.06.2021 when she had gone to talk to him regarding their marriage.

3. Complainant was taken to LBS Hospital for medical examination, wherein after due process of counselling by NGO, complainant gave history of sexual assault (fingering) by petitioner on 25.06.21 at 02:30 pm. She also gave history of sexual assault in the form of intercourse without her consent by petitioner/accused on



27.12.20 and 06.04.21. In her medical examination, history of molestation was alleged by complainant on 10.12.20 & 12.12.20.

4. After her medical examination, complainant narrated about the incidents that had happened with her and she gave a hand written complaint, wherein she stated that she came in contact with petitioner/accused Swatantra Jaysawal through website Jeevansathi.com. Petitioner/accused requested for the mobile number of complainant as he wanted to talk to her regarding their marriage. Petitioner/accused told her that he was aged about 32 years. He was unmarried and an officer in Customs. He concealed the fact regarding his first love marriage and that his first wife committed suicide for which case was going on in the Court.

5. Petitioner/Accused met complainant at Ayodhya and Lucknow on 10.12.20 and 12.12.20 respectively. Complainant told him to meet her parents, but he asked for more time to understand each other. They continued to talk and when complainant asked him to proceed with marriage talks, he called her to Faridabad. On 26.12.2020, petitioner/accused took complainant to Vivanta by Taj' Hotel in Faridabad and that night petitioner/accused raped her against her will. Petitioner/accused also told complainant that he would marry her in Arya Samaj Mandir, but later on he made excuses that mandir was closed and also told her to return to Ayodhya. Petitioner/accused



asked for one month's time to solemnize marriage, but then he did not pick her phone calls.

6. On 09.02.2021, complainant lodged a complaint with NCW through email and also informed petitioner/accused about this. Petitioner/accused contacted her and asked to withdraw that complaint and not to spoil their relations.

7. On 21.03.2021 petitioner/accused reached Bhopal and put vermilion on complainant and said that now they were husband and wife but he did not let her meet his family. In her complaint, the complainant further alleged that on 06.04.2021 also petitioner/accused raped her in car near Haldiram, Akshardham. On 14.04.2021, complainant again lodged a complaint against petitioner/accused in NCW which finally reached Mahila Thana, Faridabad'. On 21.06.2021, petitioner/accused came to that police station and again he made promise to marry complainant and accordingly she withdrew her complaint.

8. It is further alleged by the complainant that on 25.06.2020, when she came to the office of petitioner/accused to talk to him, there petitioner/accused again molested her. She resisted, but petitioner/accused started fingering inside her private parts forcibly. Complainant lodged PCR call but petitioner/accused gave threats of dire consequences to her and ran away from the spot. In view of the



above allegations, present FIR was registered against the petitioner/accused for offences U/s 376/323/506 IPC and investigation went underway.

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

10. It is submitted by the Ld. counsel for the petitioner as well as counsel for the respondent No. 2 that the parties have now amicably settled all their disputes and there is no dispute left between the parties. It is submitted by the Ld. counsel for the petitioner that the petitioner is only 34 years old and holding a Govt. job and his whole career is at stake and if the present petition is not allowed, it will jeopardize his whole life. It is submitted by the Ld. counsel for the petitioner and the counsel for the respondent No. 2 that since no dispute or grievance is left between the parties and the parties have compromised the matter in an amicable and peaceful manner, thus, no useful purpose would be served by continuing with the present case.

11. On the other hand, Ld. ASC for the State has argued on the lines of the Status Report and has submitted that the allegations against the petitioner are grave and serious in nature. He further submitted that no doubt, the parties have amicably settled the dispute between them but the offence under Section 376 IPC, is a very serious offence, rather it is



an offence against the society and the offender cannot be allowed to be let off in the garb of amicable settlement between the parties. He further submitted that the FIR may not be quashed in the instant case on the basis of the settlement arrived at between the parties.

12. In the present case, the petitioner is a Government Servant, working as Superintendent with Customs & CGST department, Govt. of India, holding a Gazetted post. So being a Government Servant, he is expected to maintain high moral rectitude and decent standard of conduct in his personal/private life and not bring discredit to his service by his misdemeanours. In fact a Government servant has all the more responsibility as far as his conduct is concerned 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.

13. 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.



14. 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)



15. 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 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)

16. 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)

17. 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)

18. 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)

19. No doubt, in the present case, both the parties i.e. petitioner and respondent No. 2 have compromised the matter amicably and respondent No. 2 has also filed an affidavit on record dated 10.08.2021 stating therein that she and the petitioner have married each other and she has no objection if the present FIR bearing No. 219/2021 is quashed as she does not wish to pursue any proceedings in FIR No. 219/2021. 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. ASC, 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.

20. 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. 219/2021 registered at Police Station Patparganj Industrial Area, with the allegations of rape cannot be quashed in exercise of powers vested in this Court under Section 482 Cr.P.C. on the basis of settlement between the complainant (Respondent No. 2) and the petitioner and their subsequent marriage as the same does not waive off the offence as alleged by the complainant against the petitioner.

21. The petition is dismissed.

RAJNISH BHATNAGAR, J

JANUARY 03, 2022

Sumant