



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

+ **CRL.M.C. 2986/2021**

Date of Decision: 25.02.2022

IN THE MATTER OF:

CHAND MOHD & ORS.

..... Petitioners

Through: Mr. Mohd. Parvez Dabas and Mr.
Uzmi Jameel Hussain, Advocates
with petitioners in person.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR. Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State with SI Koyal, P.S.
Mangol Puri.
Mr. Abu Bakar Ali, Advocate for
respondent No. 2 with respondent
No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. on behalf of the petitioners seeking quashing of FIR No.63/2021 registered under Sections 498A/406/34 IPC at P.S. Mangol Puri, Delhi on the basis of a compromise having been arrived at between the parties. During investigation, Section 376 IPC has been added to the case.



2. The present FIR was registered on the complaint of respondent No.2/complainant, wherein it was stated that she had gotten married to petitioner No.1 on 28.03.2010. Over time, the petitioners, who are the husband, mother-in-law, sister-in-law and brother-in-law of the complainant respectively, started harassing her for dowry and tortured her. Succumbing to the pressure, the complainant's family conceded to the demands but the disputes continued. On one occasion, the complainant was beaten by the petitioners and ousted from the matrimonial house. As per the allegations, petitioner No.4 (brother-in-law) kept a bad eye on the complainant. In this regard, the complainant alleged that he had established physical relations with her without her consent, whereafter he started threatening and blackmailing her.

3. On the last date of hearing, notice was issued and respondent No. 1/State was directed to file the Status Report. In pursuance, a Status Report dated 21.02.2022 has been placed on record.

4. Learned counsels for the parties submit that the present FIR arises out of a matrimonial dispute between the parties. It is further submitted that the dispute arising out of the FIR has been settled vide 'Agreement/Settlement by way of Mutual Consent' dated 28.06.2021 (*Annexure P-2*) executed between petitioner No.1 and respondent No.2 and they are living separately since 06.09.2019. They are also stated to have obtained divorce by mutual consent vide divorce letter dated 24.08.2021.

5. Learned APP for the State, on the other hand, has vehemently opposed the prayer made in the petition, on the basis of settlement arrived at between the parties for Rs.4,80,000/-. While referring to the Status Report, he submits that during investigation, statements of

CRL. M.C. 2986/2021



witnesses have been recorded and materials collected, wherefore Section 376 IPC has been added to the case.

6. I have heard learned counsels for the parties and perused the material placed on record.

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 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....”

(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 (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: Yashpal Chaudhrani and Others v. State (Govt. of NCT Delhi) and Another reported as **2019 SCC OnLine Del 8179** 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**, Kapil Gupta v. State of NCT of Delhi Through Nominated Counsel (Crl.) and Another reported as **2021 SCC OnLine Del 4598** and Prakash v. State (Govt. of NCT of Delhi) & Anr., **CRL.M.C. 465/2022** also 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. In the present case, a perusal of the settlement agreement referred to by the learned counsel for the petitioners would show that the same was executed between petitioner No.1 (husband) and respondent No.2/complainant (wife). *Prima facie*, the pending disputes between the



husband and wife, including the present FIR, were settled by way of the agreement.

At the time of execution of this agreement, investigation in the present FIR was pending and the only Sections stated in the agreement were Sections 498A/406/34 IPC. In course of investigation, Section 376 IPC was added to the case. Notably, petitioner No.4, who was the brother-in-law of the complainant at the relevant time and against whom the allegations of rape were levelled, was not a party to the settlement. Further, the affidavit placed on record on behalf of the complainant giving no-objection to the quashing of the present FIR also only mentions Sections 498A/406/34 IPC.

In this backdrop, the offence under Section 376 IPC cannot be said to have been settled by the complainant. Besides, even if the settlement arrived at between the parties could be said to have been intended to cover the offence under Section 376 IPC, the agreement would be deemed void to that extent in light of the settled position of law on the issue as outlined hereinabove.

19. Considering that the complainant has settled the disputes arising out of the present FIR insofar as the offences under Sections 498A/406/34 IPC are concerned, it is directed that the present FIR and the consequent proceedings arising therefrom are hereby quashed to the extent of the said offences.

20. However, at the same time, keeping in view the overall facts and circumstances and the enunciation of law referred hereinabove, this Court finds no ground to exercise its power under Section 482 Cr.P.C. to



NEUTRAL CITATION NO: 2022/DHC/001075

wipe off the offence under Section 376 IPC alleged to have been committed by petitioner No.4, on ground of the settlement arrived at between petitioner No.1 and the complainant.

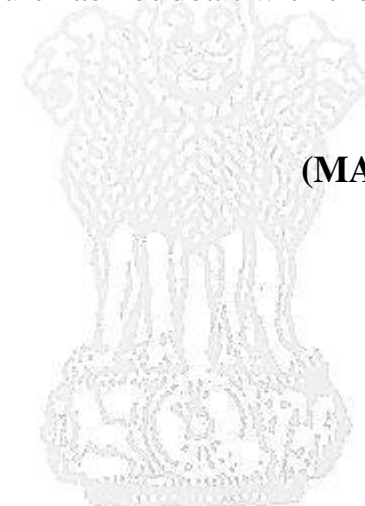
21. Accordingly, the prayer sought in the present petition is allowed to the extent of offences under Sections 498A/406/34 IPC. The petition is dismissed insofar as Section 376 IPC is concerned.

22. 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

FEBRUARY 25, 2022

ga



सत्यमेव जयते