



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

% **Date of decision: July 25, 2023**

+ **CRL.M.C. 1112/2023 & CRL.M.A. 4254/2023**

RIHAN @ NOOR MOHAMMAD **Petitioner**

Through: Mr. Mobin Akhtar, Advocate with
petitioner in person

Versus

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

Through: Mr. Mr. Ajay Vikram Singh, APP for
the State
Respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. Present petition has been filed by petitioner seeking quashing of FIR No.281/2016, dated 29.06.2016 under Section(s) 376/506 of the Indian Penal Code, 1860 and Section(s) 4/6 of Protection of Children from Sexual Offences Act, 2012, P.S. Gandhi Nagar, Delhi and all the proceedings emanating therefrom, in view of the settlement recorded in the form of a Compromise Deed dated 15.02.2023, *inter-se* the petitioner and respondent no.2.

2. As per FIR, the complainant/ prosecutrix was taken to a Doctor after having pain in her stomach and an ultrasound revealed that she was six months pregnant. The aforesaid led to the registration of the FIR, as per which an individual @Rihan, the petitioner herein, had forcefully established physical relations with her.



3. During the course of addressing arguments, the learned counsel appearing for the petitioner submits that the complainant/ prosecutrix has since married the petitioner on 04.04.2018 i.e., prior to the completion of two years of the registration of the FIR. Not only that, today they are happily living together and have also been blessed with two male children, namely Master Ayan and Master Azhar. Thereafter, he has also handed over a Compromise Deed dated 15.02.2023, which is taken on record, and submits that the complainant/ prosecutrix has since settled all her disputes with the petitioner. In fact, both complainant/prosecutrix and the petitioner are present in Court along with their son Master Ayan today.

4. It is in the context of the same that the petitioner and the complainant/ prosecutrix have since entered into a settlement and finally approached this Court for quashing of the aforesaid FIR.

5. Notice was issued and Status Report was filed.

6. Learned APP appearing for the State, relying upon the Status Report, submits that since the alleged offence is of a heinous nature, the FIR should not be quashed. However, there is no denial that the complainant/ prosecutrix was in a relation with the petitioner and that she is now the legally wedded wife of the petitioner and that they have since been blessed with two minor sons.

7. This Court has heard the learned counsel for the parties and perused the documents on record.

8. The complainant/ prosecutrix in her cross-examination recorded before the learned ASJ on 18.01.2018, i.e., prior to her marriage with the petitioner has clearly stated that she was in a consensual relationship with the petitioner for a year and that she made a false statement qua the petitioner as he was refusing to marry her and also that she had reduced her



age at the behest of her own mother. The relevant extracts thereof are reproduced as under:-

“.....I was aged about 18 years. I was having affair with accused for about one year. The physical relations between me and accused was with my consent. The complaint was lodged against accused as my family members as well as family members of accused Rehan were against our marriage(Nikah). It is incorrect to suggest that I had lodged the complaint against the accused under the pressure of my parents. It is correct that I had made a complaint against the accused in this case, as he refused to marry with me.....

.....PW1/B and also at the time when you were medically examined and therefore, explain as to on what basis today you stated that you were 18 ½ years old at the time of incident?

Ans. : My mother had got recorded my age lessor than the actual age in the school.”

9. Though it is not of concern, even in the statement of the complainant/ prosecutrix under Section 161, Cr.P.C. before the Police and that under Section 311, Cr.P.C. though not on record before this Court, as informed to this Court by the learned counsel for the petitioner, the complainant/ prosecutrix on both occasions had affirmed the above. Interestingly, the same has not been denied by the learned APP for the State.

10. In the opinion of this Court, the act committed by the petitioner and the complainant/ prosecutrix was in haste and out of sheer impulsiveness leading in the conception of their first son and eventually marriage with each other's approval and consent. Needless to mention, as on date, the petitioner is aged about 25 years and the complainant/ prosecutrix is ages about 23 years. Also, it is a matter of fact that they have been blessed with two minor sons and they all are now merrily residing together at their matrimonial home. Further, this is not a case where the families of either the petitioner or the complainant/ prosecutrix have caused any opposition or raised any



concerns qua them and it can be safely inferred that they have since been forgiven by them for a better future.

11. While considering the facts and circumstances involved in the present case, though this Court, *no doubt*, is very much mindful of the fact that the allegations levelled against the petitioner involve heinous offences involving grave punishments if he is convicted, *however*, in the opinion of this Court, looking into the holistic events in its entirety, especially when the complainant/ prosecutrix in her statement before the learned ASJ has voluntarily, without any coercion, duress and pressure, has adverted to the fact that she was all throughout in a relationship with the petitioner at the time of commission of the incident and now she is his legally married wife and that as per her own cross-examination, it was her mother who got her incorrect age recorded at the school.

12. The above reflects a turn of events embarking into a new dawn leaving the past behind as the complainant/ prosecutrix has always been consistent in her stand and wished to continue her relationship with the petitioner and had/ has no remorse/ grievance against him. Another relevant factor weighing in the mind of this Court as to why it is inclined for quashing the present FIR is the marriage inter-se the petitioner and the complainant/ prosecutrix and the birth of the two sons therefrom which clearly reflect that the same were *de-hors* the pendency of the FIR. It is thus, in the opinion of this Court that continuing with the present FIR under the existing circumstances can surely have a negative impact on the upbringing and the future of the two minor sons born out of the wedlock between the petitioner and the complainant/ prosecutrix.

13. The present is a case where in the overall opinion of this Court, there is hardly any scope for keeping the prosecution and the Courts engaged in



the current FIR, particularly whence in view of the current factual matrix involved, the chances of the petitioner being held guilty are very bleak.

14. *Prima-facie*, upon consideration of the existing peculiar facts and the overall events unfolding in their entirety, as there are rare circumstances involved here and even though this Court is mindful that the FIR has also been registered under Section 376 IPC and under Section(s) 4/6 POCSO Act, this Court is inclined to quash the present FIR in exercise of its inherent powers under Section 482 Cr.P.C., particularly when in the opinion of this Court, the same is in the interest of justice and will also be in the interest of the parties and betterment of their future and their two minor sons.

15. Further, this Court feels that no effective purpose would be served in case the FIR is kept pending as in view of the prevalent situation there is hardly any scope of the petitioner being convicted. [Re.: ***State of Rajasthan vs Tarun Vasihnav & Anr.*** dated 03.03.2023 SLP(Crl.) 1890/2023 arising out of ***Tarun Vasihnav vs. State of Rajasthan & Anr.*** dated 13.10.2022 S.B. Criminal Misc(Pet.) No.6323/2022 Rajasthan High Court of Judicature at Jodhpur and ***Kundan & Anr. vs. State & Ors.*** 2022 SCC OnLine Del 4809].

16. In view thereof, FIR No.281/2016, dated 29.06.2016 under Section(s) 376/506 IPC and Section(s) 4/6 of POCSO Act, P.S. Gandhi Nagar, Delhi and all the proceedings emanating therefrom are quashed.

17. Needless to say, the observation and finding in the present petition arrived at by this Court has only been made upon consideration of the extremely rare and exceptional circumstances involved herein and thus they shall not be construed as a precedent. In any event, the cases of the present nature are to be adjudicated individually upon the facts and circumstances involved therein.



18. Accordingly, the petition, along with the pending application, if any, stands disposed of.

SAURABH BANERJEE, J.

JULY 25, 2023