



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

Reserved on : 12.04.2023

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Pronounced on : 06.09.2023

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CRL.M.C. 961/2023

FIROZ AND ANR.

..... Petitioners

Through: Ms. Inderjeet K. Sidhu, Advocate
(DHCLSC) and Ms. Shweta
Shandilya, Advocate.
Petitioners in person.

versus

STATE OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the State
with WSI Banti, P.S.Vasant Kunj,
North.
Mr. Ganesh Singh and Mr. Rahul
Kumar, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. Long and short of the case is that the mother of the victim i.e. respondent no.2 herein lodged a missing complaint which stands registered as case FIR No. 429/2021 under Section 363 IPC, registered at P.S. Vasant Kunj. After more than 7 months, the investigating agency traced and recovered the daughter of the respondent no.2 i.e. petitioner no.2 herein along the petitioner no.1 from Uttar Pradesh and were brought to Delhi.



Further, medical of petitioner no.2 was conducted and UTP was found negative and thereafter, on 13.07.2022, petitioner no.1 was arrested.

2. On 14.07.2022, the statement of petitioner no.2 under Section 164 Cr.P.C. was recorded wherein, she had categorically narrated and stated that she became friends with petitioner no.1 through Instagram and both were in love relationship. Petitioner no.2 further stated that she left her home in Delhi on 23.11.2021 on her own to meet petitioner no.1 at UP and whatever, has happened thereafter, was with her consent and no one forced her.

3. On 10.11.2022, after the petitioner no.1 was granted regular bail; being incarcerated for three months and both the petitioners got married and since then they are living happily as a married couple.

4. On 11.11.2022, charges under Sections 363/366/376 IPC and Section 6 POCSO Act 2012 were framed.

5. Hence, both the petitioners, by virtue of this petition, are seeking quashing of FIR No. 429/2021 under Section 363 IPC, registered at P.S. Vasant Kunj, and the proceedings emanating therefrom on the ground that they are married and living happily together as husband and wife in their matrimonial home.

6. Learned counsel for the petitioner submitted that the petitioner no.2 after attaining majority had married petitioner no.1 and had continued to show her willingness to stay with the petitioner no.1. Learned counsel further submitted that the petitioners are living together in harmony in matrimony and the possibility of a conviction is remote and continuation of criminal proceedings would cause oppression and prejudice to both the petitioners.



7. During the course of the arguments, learned counsel for the petitioner has drawn to attention of this court to the various judgments passed by the Hon'ble Supreme Court in *S. Vardarajan Vs. State of Madras*, 1965 SCR Vol. I pg. 243 and judgments passed by various High Courts in *Jayaprakash Vs. The Inspector of Police, Chennai & others*, Crl.O.P.No. 15269 of 2022 decided on 06.07.2022; *S. Sathish Kumar Vs. State & anr*, Crl.O.P. No. 7837/2022 decided on 27.04.2022 by Madras High Court; *Court on its Own Motion (Lajja Devi Vs. State; 193(2012) DLT 619(FB), Para 51)*; *Saurabh & anr Vs. State & others*, Crl. M.C. No.5941/2019 decided on 25.11.2016; *Kundan & anr Vs. State & ors*, Crl.M.C. No. 27/2022 decided on 21.02.2022 by Delhi High Court.

8. In this instant case having exceptional circumstances it is necessary to look into the various legal precedents for adequate adjudication, in this regard, the Apex Court in the case of *MafatLal and Another Vs. The State of Rajasthan*, Criminal Appeal No.592 of 2022 (arising out of SLP (CRL.) no. 1806 of 2021) has held as under:

"6. The High Court although records all such facts, appears to have been swayed with the fact that the abductee was a minor at the time when she left her home and that the appellant had evaded the investigation and had been successful in keeping away from the process of law for several years. The High Court further proceeded on the assumption that the appellant had actually kidnapped/abducted the minor daughter of the complainant.

7. Before this Court, also the abductee has joined the accused as appellant No.2. Once again similar stand has been taken as was taken before the High Court. Both the appellants have filed separate affidavits. Appellant No.2 has specifically stated before the High Court as also before this Court that she had left her parental home on her own free volition. The appellants are married since December 2006 and have been living happily. They have also been blessed with a son in the year 2014 who would now be 8 years old. No fruitful purpose would be served by



relegating the matter for conducting the trial as the same would not be conducive for either of the appellants. It would be a futile exercise. Kidnapping would necessarily involve enticing or taking away any minor under eighteen years of age if a female for the offence under Section 363 IPC. In the present case, the abductee had clearly stated that she was neither taken away nor induced and that she had left her home of her own free will. Section 366 IPC would come into play only where there is a forceful compulsion of marriage, by kidnapping or by inducing a woman. This offence also would not be made out once the appellant no. 2 the abductee has clearly stated that she was in love with the appellant no.1 and that she left her home on account of the disturbing circumstances at her parental home as the said relationship was not acceptable to her father and that she married appellant no.1 on her own free will without any influence being exercised by appellant no.1."

9. Further, the Hon'ble Supreme Court in the case of ***Parbatbhai Aahir & Ors. Vs. State of Gujarat & Anr., Criminal Appeal No. 1723 of 2017***, after discussing various precedents on the subject summarized, the following broad principles in relation to Section 482 for quashing FIR :-

"(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;



(v) *The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;*

(vi) *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim has settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;*

(vii) *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;*

(viii) *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;*

(ix) *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

(x) *There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

10. Reference can also be taken from the judgment passed by the Hon'ble Supreme Court in ***Kapil Gupta v. State of NCT of Delhi, 2022 SCC***



OnLine SC 1030, whereby an FIR under Section 376 of IPC was quashed and in particular to paragraphs 13, 14 and 17 which enunciates as follows:

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

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17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”

11. I have perused the aforesaid judgments and evaluated the same with the facts of the present case and I am of the considered opinion that the observations made by the Hon'ble Supreme Court in the aforesaid judgments would squarely apply in the present case.

12. Applying the law is not akin to solving a mathematical theorem; it cannot be done in isolation. As the people of the State are affected by these legal decisions, a rigid and mathematical application of the law may lead to



disastrous outcomes. For instance, if a person is the sole provider for their family and serves as the head of the household, sending them to jail could result in severe hardship for their dependents. Therefore, such a strict approach would be considered cruel and impractical.

13. After giving due consideration to all the aspects of the matter, this Court is of the opinion that this petition deserves to be allowed. The victim in this case has married with the petitioner and she wants to live with her husband. She has made the statement that she went with the petitioner with her consent and her statement was not made under any force, coercion or undue influence.

14. In view of the facts and circumstances of the case, no useful purpose will be served by keeping the case pending and it will be nothing but abuse of the process of law. Accordingly, this petition is allowed and FIR No. 429/2021 under Section 363 IPC, registered at P.S. Vasant Kunj, and the proceedings emanating therefrom are hereby stand quashed.

RAJNISH BHATNAGAR, J

SEPTEMBER 6, 2023

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