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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 5th December, 2023

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CRL.M.C. 5124/2023**PUSHPENDRA KUMAR AND ORS**

..... Petitioners

Through: Mr.S.K.Sharma, Advocate with
petitioners in person.

versus

THE STATE AND ANOTHER

..... Respondents

Through: Mr.Ritesh Kumar Bahri, APP for
State with SI Rakhi, PS.Jyoti Nagar.
Mr.K.K.Tyagi, Advocate for R-2 with
R-2 in person.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****JUDGMENT****AMIT BANSAL, J. (Oral)****CRL.M.C. 5124/2023**

1. The present petition has been filed seeking quashing of FIR No.235/2016 under Sections 498A/406/376(F)/376(2)(n)/109/342/376(D)/376/ 377/ 506/ 34 of the Indian Penal Code, 1860 (IPC) and Section 4 of the Dowry Prohibition Act, 1961 registered at Police Station Jyoti Nagar on the ground of settlement.
2. Petitioner no.1 was married to respondent no.2 and petitioner no.2, petitioner no. 3 and petitioner no. 4 were the brother-in-law, father-in-law

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and mother-in-law, respectively of the respondent no.2.

3. It is stated that parties have settled their disputes *vide* Settlement Deed dated 23rd April, 2019 filed as Annexure P-3. In terms of the settlement, petitioner no.1, who is the husband of the respondent no.2, had to pay a sum of Rs.5,70,000/- to the respondent no.2.

4. It is further stated that out of the aforesaid amount, a sum of Rs3,70,000/- has been paid at the time of the recording of the first and second motion and the balance amount of Rs.2,00,000/- is payable upon quashing of the present FIR.

5. Reliance has been placed on the judgment of the Coordinate Bench in W.P (CRL) 1185/2022 titled *Arshad Ahmad and Ors. v. State of NCT of Delhi and Anr.* decided on 2nd June, 2022, wherein FIR under Sections 376/377 of the IPC was quashed on the basis of settlement.

6. Status Report has been filed opposing the quashing of the present FIR. Along with the Status Report, statements of the respondent no. 2 given before the Trial Court have also been filed.

7. Learned APP appearing on behalf of the State states that FIR in offences such as rape cannot be quashed on the basis of a settlement. Reliance in this regard has been made on the judgment of the Supreme Court in *State of M.P v. Madanlal*, 2015 7 SCC 681.

8. He submits that the respondent no. 2 has consistently supported the case of the prosecution, based on her statements given before the learned Trial Court.

9. I have heard the parties and perused the material on record.

10. The issue that arises for consideration in the present case is whether an FIR involving an offence of rape under Section 376 of the IPC can be



quashed on the basis of settlement.

11. The Supreme Court in **Madanlal** (Supra), has categorically held that there cannot be any quashing of FIR on the basis of settlement in cases involving rape or attempt to rape. Relevant observations of the Supreme Court are set out below:

“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.”

12. In **Narender Singh v. State of Punjab**, (2014) 6 SCC 466, the Supreme Court has held that the timing of the settlement plays a crucial role when deciding quashing of FIR under serious and heinous offences on the basis of settlement. It was held that where the settlement is arrived at, immediately after the commission of an offence or when the trial is at an infant stage, it has to be given more weightage as compared to a settlement



arrived at a much-belated stage. The relevant observations from *Narender Singh* (Supra) have been set out herein below:-

“29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timing of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceeding/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from the exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not.....”

13. The aforementioned observations were approved by the Supreme Court in its recent judgment in *Kapil Gupta v. State of NCT of Delhi*, 2022 SCC Online SC 1030. The relevant observations from *Kapil Gupta* (Supra) have been set out herein below:-

“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.”

14. The aforesaid judgment of *Madanlal* (Supra) was followed by me in an order dated 2nd August, 2023 in CRL.M.C. 3346/2023 titled *Sanjay & Anr. v. The State (Govt. of NCT of Delhi) & Anr.*, wherein the quashing of FIR under Section 376 of the IPC on the ground of settlement was refused.

15. Counsel appearing on behalf of the petitioner has relied upon the judgment of Coordinate Bench in *Arshad Ahmad* (Supra) to support quashing of FIR on the basis of settlement. However, the said judgment is distinguishable as in that case the prosecutrix in her statement under Section 164 of the Cr.P.C, stated that only an attempt to rape had been committed. Furthermore, no charges were framed in that case.

16. In light of the aforesaid judgments of the Supreme Court, the legal principle that emerges is that heinous offences like rape cannot normally be quashed on the basis of settlement. Such offences have a large impact on the society and quashing them on the basis of settlement would be opposed to public policy. Quashing of FIR under Section 376 of the IPC, on the basis of settlement, would go against protecting the dignity of a woman and the very moral fabric of the society at large.

17. Another principle that emerges from the aforesaid judgments is that there cannot be a universal rule with regard to quashing of FIR, filed under charges of rape, based on a settlement. Each case has to be assessed on its own merits and based on the facts and circumstances of that case.

18. In the present case, the FIR was lodged in the year 2016 and subsequently, charges were framed against all the petitioners herein. The evidence of the respondent no.2 was recorded as far back in 2018 supporting



the case of the prosecution.

19. In her testimonies recorded on different dates, the respondent no. 2 has described in detail the role of each of the petitioners in respect of the sexual offences committed against her. It is only in her statement on 30th January, 2023, in cross-examination, she withdrew from her previous statements alleging rape. It appears this was done on account of monetary inducement given to her by the accused persons. In my considered view, the settlement in this case is not *bona fide* and therefore, will not absolve the petitioners of the offences for which they are charged. Further, the settlement has been arrived at a highly belated stage, after the respondent no.2 had deposed before the Trial Court on multiple occasions.

20. In view of the discussion above, I am of the considered view that the present petition seeking quashing of FIR under Section 376 on the basis of settlement cannot be allowed. I am not inclined to exercise powers under Section 482 of the Cr.P.C. to quash the present FIR.

21. Needless to state that any observations made herein are purely for the purposes of deciding the present petition and shall not be construed as an expression on the merits of the case.

22. Accordingly, the petition is disposed of.

AMIT BANSAL, J.

DECEMBER 5, 2023

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